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A

# DISCOURSE

OF THE

## State Ecclesiastical

Of this Kingdom, in relation to the  
CIVIL.

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Considered under III. Conclusions.

- I. *That the present State Ecclesiastical is most convenient and best agreeing with the Civil.*
  - II. *That under the dominion and protection of this Civil State, this State is most likely to enjoy all those Rights which can any way belong unto it.*
  - III. *That all the Rights and Respects that the State Ecclesiastical enjoys or desires, are originally derived from their relation and dependence on the Civil.*
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L O N D O N,  
Sold by Richard Roysson, at the Angel in Ivie-lane.  
1 6 6 4. *h. 6.*

# COURSE

OF THE

## State Ecclesiastical

Of this Kingdom in relation to the  
CIVIL



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# THE FIRST CONCLVSION.

*That the present State Ecclesiasticall is most convenient,  
and best agreeing with the Civill.*



**T**is not a little loose consideration, that will cause us to conceive with what care and cost States and Kingdomes should be preserved, seeing they uphold and derive all happinesse to man, as he is a sociable and a feeble creature; and yet in themselves are so subject to decay, and the causes of their corruptions being so many. For the best tempered Common-wealth is not of any constant continuation, but full of changes, and those at last will, after much interchange, drive it to a fatall period. It must therefore bee the care of the present age, to see that it receive no detriment while they are in it, for they may bee so disorderly, as to worke no distemper, but conserve it in health & wealth, or at least keep it from decaying so fast, that having some space to fall in, it may recover, or they have time to leave it, and not fall with it, nor it fall upon them. Now the best, and all that the passing present generation can doe, is

either to keepe things in primitive order, or to reforme them to it. The first of which is difficult to continue, the other dangerous if long discontinued. Yet Kingdomes must bee conserved, by the same meanes they were first established. This labour and care then will bee to best purpose bestowed upon those parts which are most necessary, and uphold the rest as essentiall and fundamentall, being the principles of the intrinsicall, originall good:

*Polybini hist.*  
*lib. 6.*

ἡ δὲ ἀρχὴ τῆς πολιτείας, ἐστὶν ἡ θρησκεία, or upon those that secure these, διότι γὰρ ὅντων δι' αὐτὴν συνέστηκεν πολιτεία πάντων. Now that which is the only infallible ground of these, must needs be principally respected by those that are undertakers for the publick good; and that ground is True Religion. For though ill manners are *per accidens* the cause or rather the occasion of making good lawes, yet they are better in the exccuting, best when they are obeyed. Now good manners cause obedience, and Religion naturally begets good manners. But Religion cannot subsist without publicke exercise and action; and to the requirites of it are times, places, ceremonies, and some persons who ought to be set apart, and wholly, and only employed in it, as dedicated and devoted to that worke, and they must be in the Common-wealth. Therefore seeing it is necessary to have a Religion to preserve the Common-wealth, it is by consequent as needfull, to have preservers of Religion, that may not overturne the Common-wealth by over-ruling Religion. Wherefore the choyce of them needs to be such, that seeing they must be in the Common-wealth of necessity, they may be of the Common-wealth for universall safety. And yet they are to be distinguished by state, and order, to avoid confusion; nor doth their distinction enforce any such forme, after which they must govern, as may be inconvenient to the publick civill state, whereby they are to be governed. The care then of the wisest, must be either to preserve, or restore that forme of the

*St Tho. Moore*  
*his Apologie*  
*for the spiritual*  
*ality, cap. 10.*

## CONCLUSION

the Clergy, which is most agreeing with the Civill State,  
& that will be the meanes to prolong the age of the State,  
by preserving concord amongst societies; which, though  
at last it come to an end, yet it may out-last our dayes, that  
wee be not unhappie in the ruine; for it is not the infelici-  
tie of States which have long flourished to decay, or be  
destroyed, but the unhappinesse of those men, whose hap-  
it is then to live, and not when they did flourish. Now  
every forme of a Clergie will not fit, but according to di-  
vers countries, they have beene severall, suiting to the  
times, places, and people. The first was the originall,  
domesticall discipline in private families, before God  
made choyse, and actually separated a Nation to himselfe.  
Then followed the Leviticall Nationall Regiment, com-  
pounded and composed of and according to the Ceremo-  
niall and Judicall Lawes. Both these formes vvere not  
onely by a divine permission, but also by injunction;  
yet not perpetuall nor universall. Neither of these then  
are the government wee must chuse, because that manner  
of exercising religion is antiquated. We must then consi-  
der of a forme, which may be conformable to the present  
practice of true Religion, in relation to Gods revealed  
Will, which may withall be surable, and sorting with  
this present State, that so they may uphold each other;  
which forme, though it be not according to Gods ex-  
presse mandate in some particulars, yet it is not against  
it, but with his permission of approbation in all points.  
Now in this choyce, wee must consider our owne forme  
of Civill government, and whether that were imposed  
upon us by conquest or by our owne consent; if by free  
consent and of long continuance, it will with more ease  
and desire be preserved, and with greatest danger alte-  
red; if by conquest, the more Charters of priviledges are  
granted to us under it, the more it is endeared to us, and  
esteemed happie; but our forme of state is a free Monar-  
chie,

*Guicciardine  
hypomneses  
Fol. 141.*

chie, erected and protected by free consent, and of long continuance, not imposed; but confirmed, and reformed to the first freedom by a happie Conquest, and endeed unto us by many Charters of wholesome priviledges. Therefore we must seeke or keepe such a forme of State Ecclesiasticall, as may best accord with our forme of Civill policie.

¶ *WS. 1.* This present State Ecclesiasticall is the forme that best agrees with the Civill State. That it is not against the Law of God, I will not goe about to prove, because I hope none will question it: neither that it was the Primitive, & is to be wished that it were the government of the present visible Catholique Church, because that is already proved without all contradiction by many most judicious and orthodoxe Divines: But my undertaking is (as farre as God shall give me understanding) to discourse, how it is most agreeable with this Kingdome. All States have alwaies endeavoured, as to have a religion, so to frame the exercise of it according to their owne dispositions: but some with more doting indulgence, have at last changed it into that which they were most naturally disposed to, and did not alter and order their inclinations by it. As the grand Monarchies, the Chaldean with whom the Persian may well be joyed, these turned the acts of religion into Philosophicall considerations, enquiries, and explications of nature. The Egyptians (a principall branch of these Monarchies, and from whom some thinke the Chaldeans were derived, and that *Belus Neptrini Libia. que filius in Babyloniam colonos ex Egypto traduxisset, & ex his Sacerdotes quos Chaldaos Babylonii vocant, qui more Egyptiorum astra observant, &c.*) These Egyptians naturally *Δεισιδαιμονες, μυστικῶς*, superstitious in religion, curious in mysteries, transformed religion into all kinde of superstitions, and by trying conclusions, and chymicall experiments upon it, conceited the substance of it into unexpected

*Diodorus Siculus  
Biblioth. l. 1.*

unexpected fancies, furthered by mimickall expressions, leading into, and leaving in mysticall mazes. The *Grecians* by nature Νοήμονες, ευρηστικά, & φιλοδυσίκα, intelligent, able to finde out, and loving to contend, drew religion into disputes, and would beleieve no more than they could finde out by search of reason, and apprehend by force of fancie; and that they obstinately maintained, by a wanton working wit, which they might with more ease doe, seeing their language was so happie for expression. The *Romans*, by nature inclined to dominion, fitted the frame of their religion to a Monarchicall forme under the *Pontifices*; yet they seemed to seeke a Monopolie of all the Gods in the world: for they received and worshipped the Gods of all the Nations they conquered. These Nations framing religion to these ends, had a forme of government, under religious persons, suitable to further, contrive, and compass by all meanes their particular purposes, and therefore they gave them power, of a most large extent; yea they were ruled by them; for the *Chaldean Kings* were originally Priests, and Ἀρχὴ πρῶτος ἔχοντος συγγενὸς τῶν ἱερῶν ἐκασταύτου (that is, the *Egyptians* were anciently governed by Priests: ) a Priest, and a Prince were all one with them. So the *Magi* amongst the *Persians*, the Priests of Ἀπολλὼ at *Delphos* amongst the *Grecians*, did what they would. And the *Romans* were led by their *Pontifices* and *Augures*, but it was whither they would, namely to a Monarchie. Wee having not the ends of these Nations in our religion, must not use the same forme of Clergie. For I conceive the aime of the best and wisest with us, is to preserve the Church and Common-wealth together. Now it cannot bee, where the state of the Clergie governs, but where it is governed. Our aime being such, let us consider what forme will be best governed under this Monarchie. There are but three distinct formes

Cujacius in l. 2.  
d. Orig. I. Civ.  
lu. 5. 12.

Aug. de Civit.  
Dei. l. 20. c. 12.

Synesius Epist.  
12.

Cujac. in d. l. 2.  
d. Orig.

of Ecclesiasticall government in Christendome, as the Monarchicall, Aristocraticall, Democraticall; of these, the Aristocraticall is most conformable to the rule of this Realme. In proving of which assertion, I will not onely insist upon the prooffe of past and present experience, that it is so, but discourse in reason why it should be so. And first in opposition to the other formes of Ecclesiasticall government: what they are likely to produce, vvoefull experience hath long since felt in the one, and what wee may expect, upon probable conjecture, from the other, is not to bee desired by any that understand, and love the happinesse of this Civill State. For all their principles, fundamentall in their grounds, of augmentation in their growth, of conservation in their heighth, and of reparations in their decayes are most dangerous for this Monarchie; and the causes of their corruption would be so incorporated into the body and bowels of the Civill State, that if it fall not before them and into their hands, they would goe neare to pull it downe with them when they fall. Not to speake of their power, which they must have, and the exercise of it, either in an ordinarie and lawfull course, or by indulgence; or usurpation, and the manner of their proceedings in the execution of it, what instruments they use in counsell and action, how much they trench upon the power, undermine the government, countermine the proceedings, countermand the edict, and confront a Monarchie, I leave it to wise and active men to consider.

I. 5. 3. First to speake of the Monarchicall, which is now the Papall government. How this Monarchicall forme hath heretofore agreed with the State, all know; and it is not likely that it should now so well accord with it, because the reasons of that little agreement then are ceased, which were the then present particular interests wherein this State used that Monarchy, for the we aimed to enlarge

our

γενεσματα της  
πολιτεας.  
Polyb. lib. 6.



our dominion by the right of succession in *France*, by the right of conquest in *Scotland* and *Ireland*. But the causes of disagreement still remaine, and are on their part aggravated to an utter opposition; so that as before it was dangerous, so now it is a desperate case to re-entertaine that forme of Clergie, which can and will rule us, and must necessarily alter and so worke the ruine of the present State. Under this forme this Kingdome was no Monarchie, but a Province, under a forreiner, an usurper and a Tyrant. This was our best condition when that Clergy ruled us, though as favourable as they could; or did, any Monarchie in *Europe*. The lawes and priviledges of the Land were continually broken and infringed by them, especially those lawes that did most immediatly uphold the Kings prerogative. Against them they continually promulgated particular edicts; for the Decrees were too generall to bee applyed to occasions, and therefore they added the Decretals, so called, because they gave wings to the Decrees for quicker dispatch. And we shall finde that most of the *Decretall* Epistles, which concerne Jurisdiction, were written to *English* Prelates. And (as I conceive) some reason might be, because the lawes of this Land are more contrary to the Canon Law, than the lawes of any other States in Christendome, being they are more ruled by the Civill Law, from which the Canon is derived, and so more causes might arise here amongst us, either out of the contrariety of the Lawes, or out of the narrower extent of the Common Law, and also partly out of the ignorance of the proceedings of this State, which was then likely to be most, because intercourse and intelligence with *Rome* for that time was abridged; (for *Henry 2<sup>d</sup>*, being then at variance with *Thomas Becket*, who was sheltered by the Pope *Alexander* the third, permitted not any Legate to reside in the Kingdome; but as sone as *Vivian* was arrived, he was questioned, and that by the

*Duarenus de  
beneficijs Eccles.  
in Proemio.*



Bishops of *Winchester* and *Ely*, how hee durst land without the Kings speciall licence.) And partly they writ the oftner to *English* Bishops, because they suspected them, and justly, to be more partiall for their Prince, than the Prelates of any other Kingdome, as appears by their readinesse to examine this Legate, and also by an Epistle Decretall of *Alexander* the third, to the Bishop of *London*, who then was *Gilbert Foliot* (a man much commended by *Mathew Paris*, and *John Salisburienfis*) in that Epistle hee carries favour with him in a cause which hee knew was of Ecclesiasticall cognizance, and was so judged here in the Kings Court, (as appears out of *Glanvill* then Lord chiefe Justice) I thinke in the very particular case. But hee feared, seeing the Bishop could doe so much with the King, and would doe so much for his King, least hee should finde some way to intitle it to the Crowne: and he had good reason to feare, since the Bishop had so often in the Kings behalfe opposed *Thomas Becket* and him. These may bee some reasons why the Popes sent so many Epistles into *England*, and I am the more confirmed in them, because I finde they were for the greatest part written by the most Pragmaticall Popes, who busied and bestirred themselves most in setting up orders, and new fresh Fryes, and fraternities of Fryars, and in pulling downe the powers both of our Kings and Bishops: to wit, from those seven Popes who were the thirds, and I thinke the worst of their names, I am sure of their prodecessors. As for the most part they were written from *Alex. 3. Lucius tertius, Urbanus tertius, Clemens tertius, Celestinus tertius, Innocens tertius*, and *Honorius tertius*; these men did and undid very much, because they were active, and lived long. If then this forme of Clergy was thus prejudiciall to our State before it was opposed and incensed by the statute of *Provisio* and *Procuracione*, and cast off by the Kings just re-assuming their power,

*C. causam.  
extr. qui filii  
sunt legitim.  
Sarruburiensis  
de nugii curial.  
lib. 7. cap. 24.  
Glanvill, lib. 7.  
cap. 15.  
Ad Regem Anglia  
pertinet de  
possessionibus  
iudicare.  
Iohannes de Pa-  
risys contra Bo-  
mifacium testa-  
tum, cap. 12.  
Alexander 3.  
pp. dicit. Ad  
Regem pertinet,  
non ad Eccl. si  
am, de talibus  
possessionibus,  
iudicare, ne vi-  
deamur juri Re-  
gi Anglorum  
destruere.  
Liber de potest.  
pape anonymus,  
qui incipit, Rex Paci-  
ficus.*

power, (which shewes that all their right was nothing but our Sovereignes wrong ; ) surely now we are not to expect so much favour from them : and therefore as the State then thought it necessary and right to casheere it, and brought their purpose fully to passe ; so it is now more necessary and just to keepe it out, since it is infinitely increased in tyranny, since that unhappy, unadvised, ill-advised, Non-Catholique Councell at *Trent*.

§. 4. Those Nations shall have the best use of that forme, who propound a Civill State as large as their Ecclesiasticall ; and to whom it hath first sought too for assistance: and withall are able to over-rule it. For after *Justinianus* the last of the true *Roman* Emperours, and *Gregory* the last of the good Popes, that See clave to *Phocas* ; who named the Pope Universall Bishop, that he might proclaime him Catholique Emperour. But when in the next Centurie the Easterne Emperours, infected with the *Saraceni* warre, began to pull downe Images as some cause of the warres, which the Pope endeavoured to set up againe by the second Councell of *Nice*, then, whether because they did wrong him in disobedience, or rather because they could doe him no good, the *Greece* Pope *Zachary* fell off to the *French* before the next Centurie. And then *Pipin* used him to confirme, not to conferre his new atchieved Kingdome ; for in those dayes they gave no such power, neither did Pope *Zachary* clayme it : for he deposed not *Childerick*, but consented to the deposing, which was by the Peeres of *France* ; neither did he set up *Pipin* in his roome: but they that deposed the other onely sent to *Rome* to have *Zacharies* advise in it, because it might passe more plausibly in the world by the consent of so grave an Oracle : as it hath alway beene good wisdom to winde in the conscience of one who is esteemed an upright Judge, for the countenance of an unnsnall cause humorously undertaken by the first

*Bulla quasi  
Bulla, et iurista*

*Baronius An-  
nal. Anno 750.*

*Baronius An-  
nal. Anno 751.*

*Augustinus de  
Ancon. de pe-  
test. Papa:  
quasi. 37. Art. 5.*

*Sigibertus  
chron. passim.*

Author; especially there being then a faction amongst the Bishops of *France*: so that this inquirie of his judgement in point of fact, did not submit to any clayme of right. And *Gotefridus Viterbiensis* affirms, and *Baronius* confesses, *Francos non Zacharia parnisse decreto, sed acquievissse consilio*: and there is great difference betwixt an absolute injunction, and a politique advise, which is onely an answer out of discretion and left to discretion, and implies no obligation of necessity. But this is without question, *Pipin* being ambitious of the Kingdome, and desirous to cover and colour it with religious ends, used the Pope to countenance and compasse his designe; who would not withstand him, being ingaged to him for protection, and by bounty; or, which is likelier, he durst not, being too much in his power. But howsoever it was, he clave fast unto the *French* for that Centurie: especially to *Charles* the Great, the repairer of the Western Empire; from whom the *Caroline* succession continued till *Osbo* the third. But then the *French* Kings, being distracted by warres at home, could no more assist them: *Gregory* the first an *Almaine* transferred it to the *Almaines*, chose those seaven Electors; but the Pope agreed not well with those Emperours: for after the *Almaine* Pope was dead and *Italians* succeeded, they presently began to quarrell with the Emperour, and to send challenges of right into *Italy*; knowing that the Emperour was not able to doe much for them in giving them as the *French* had done, and perceiving hee was more unable to hold from them that which they would have: so that the Emperours were continually imbroyled by them, being not able to rule them, decreasing as fast as they rose. Then the opposition betwixt many particular Popes & Emperours, (as betwixt *Gregory* the seaventh and *Henry* the fourth, & *Alexander* the third with *Fredericke Barbarossa*) was very strong. But after it grew to such a height that they were settled into

into factions of separations, as the Ecclesiastiques and Imperialists, especially in *Italy*; which the *Italians* quickly perceiving, because earnestly desiring the Emperours power over them to be looser, began to make use of the Papall present opposition to procure their full libertie: and therefore these factions were most strong there. Yea that grand faction distinguished by many formalities, was principally maintained under the names of the *Guelfs* and *Gibellins*, which swallowed up all the private and pettie familie-factions of *Italie*. As the *Vrsini* in *Rome* were *Guelfs*, the *Collonensi* *Gibellins*, the *Vberis* in *Florence* were *Gibellins*, the *Bondelmonti* *Guelfs*; & so it was in *Naples*, *Milane*, & *Genoa*, where the *Spinoli* were *Guelfs*, & the *Grimaldi* *Gibellins*; which strife continued hot till *Boniface* the eight, who perceiving how much his Predecessors had gained upon the Emperor, & saw but little more for him to get, began to practise the like domineering humour upon the other Potentates of Christendome, sending his letters of claime to the Kings of *France*, *England*, *Scotland*, *Denmarke*, *Poland*, *Hungarie*. But being opposed by *Philip le Beau* King of *France*, hee did flie backe to the Emperour for succour, who then was *Albertus*, the first Emperour of the house of *Austria* (for though his father was Emperour, yet hee was not of the house of *Austria*, neither of the old Marquesses nor late Dukes, but Earle of *Hamburg*, who had conquered the Dukedome of *Austria* for his sonne. This *Boniface* the Spaniard first began the faction betwixt the Kingdome of *France* & the house of *Austria*, by giving the Kingdome of *France* to *Albertus*. These two better agreed than any, because the Pope had taken off the Emperour from seeking his owne right in *Italie*, by employing him as his champion to enlarge his Dominion in other Kingdomes: and partly because the Emperour had good hope to continue the Empire in his familie, as it hath neere foure hundred yeares. From which

*Nubrigensis* >  
*hist. Anglicana*  
*lib. 4. c. 13.*  
*Abbas Vassper-*  
*gensis Chron.*  
*passim.*

*Math. Paris.*  
*hist. Anglicana*  
*Anno 1215.*

*Gerard du Hal-*  
*lan des affaires*  
*liv. 2.*

which time the Emperours and Popes disagreements were not so frequent, but onely when some *French* favourers were Popes, and they sate at *Avinion*; as *Clement* the fifth with *Henry* the seventh, and during the times of the Councils of *Constance* and *Basill*. But by reason of the schismes in the *Roman* See, they did one another neither much good nor harme, untill the time of *Alexander* the sixth, a *Spaniard*, who was exactly ambitious, a great lover of his Country, and one that did much for it. For hee joyned with *Ferdinand* the first Catholique King, helping him to subdue *Spaine*, and therefore first brought in the Inquisition *Contra los Indios y Moros, que le avian tornado Christianos*, (that is, against the *Jewes*, & *Mooves* that would not turn to Christianity) which *Caranza* Archbishop of *Toledo*, saith *Ferdinand*, conceived himselfe bound in conscience to use, by vertue of an oath taken with an imprecation by one of his predecessors in the fourth Council of *Toledo*, which *Baronius* so much commends. This Pope also bestowed upon him the then discovered *Indies*, with many other favours; and for his sake, and in opposition to the *French*, hee was as fast a friend to the house of *Austria*, as his deepe dissimulation would suffer him; and the rather, because they had lately matched with the House of *Burgundie*, which much weakened the *French* force, and strengthened their factions. But then most whē *Philip*, the heire of the House of *Austria* & *Burgundie*, incorporated himself with *Spaine*. So that I will conclude these things considered, that this forme is only safe & convenient for those Kingdomes that propose Conquests, and can rule it as the protectors of it.

§. 5. So then seeing this Clergie is not for us, I will consider of the other, which for distinct proceeding, wee may call *Democraticall*. When the three Prime Potentates of Christendome were, *Charles* the sixth, *Henry* the eighth, *Francis* the first, such as deserved and desired to have all

*Anonymus*  
*Hisp. in vita*  
*Alex.*

*Baronius An-*  
*nal. An. 637.*

*Philip. Comine-*  
*us. lib. 8.*

*Thuanus hist.*  
*lib. 4.*

the

the soveraign power that could of right belong unto them, and yet were contrariwise usurped upon, & deprived of all their eminent supremacie, in those things that most concerned them; and perceiving (some beginning to question the Pope) a course of relieving themselves, they began to urge a Councell for reformation, not only in doctrine & manners, but also in point of Ecclesiasticall government. But it was so long urged by them, to no purpose, that *Henry* the eight advisedly wrote to the other; That seeing the Pope had so long put it off, & now intended to hold it within his owne Territories it were the best course for every one to reforme his owne Kingdome; and he did so, with the advise, consent, & desire of the Church and State-representative. No sooner was a reformation in any degree settled, but presently it was excepted against by some that favoured the Church of *Geneva*, as not fully reformed, because not agreeing with their new neat plat-forme; & that was urged upon us, as the only Apostolicall government of the Church. But I marvell how such an exact government should be so suddenly framed, or else, which is more strange, that they could so conceale their happy invention, as that *Francis* the first, a King of *France*, that searched into his government as much as any, should not know of it. For I am very much deceived, if he had not bin much mistaken, knowing of this project, to desire the Councell might be held at *Geneva*, being it was Diametrically opposite to the *Roman*. But our State had no reason to receive it. For though it was necessary, not only in reason of State, but also out of conscience, that after wee perceived the indisposition of the *Roman* Clergie to reforme themselves, (which they seeme to hold impossible, for though every Cardinall take an oath in the vacancie, yet it cannot binde him when he is Pope) we should then performe our duty, especially seeing it stood with the publick good. Yet neither of these considerations did engage

*Histor. Concil.  
Trad. l. 2.*

*Histor. Concil.  
Trident. l. 2.*



gage us to accept of such a forme of Clergie, as seemed to runne a cleane contrarie course, seeing we propounde not an innovation, but a reformation; that being as dangerous, as this was necessary; it could not here be entertained without an universall innovatiō. Now all stirring changes are dangerous, especially when the body of the Commonwealth is full of diseases, discontented humours. Because all alteration sets the humours a working, and one humour being a-foote stirres up all the rest, either alluring by sympathy, or provoking by antipathy; & when they are once a-foote, it is to be feared, that they will not only disburthen the body of malignant oppressing crudities, (as is onely to be wished) but also weaken it in the most principall parts, causing it to receive a disposition to the like distemper, upon every small distaste. But is is most dangerous to innovate in that part of a Commonwealth, that is most essentially active, and hath beene lately recovered, especially if the matter proposed do minister any cause of relapse. Both which seeme too true in this new discipline, which gave an occasion to the Clergie to revolt in the denying the supremacie, which they lately acknowledged. And being a forraine *French* device, might seeme to come within the compasse of a *premunire* for intrusion, as well as that of the Church of *Rome* for usurpation. But this was only propounded, not brought in, & that by men who were by some beleevd to be faithfull to our State. And it may be they had no dangerous aime in it: yet they have no reason to be offended, if wee doubt whether such active errors would not have bin more dangerous in the events than they could be in their intentions, neither have they any true ground to censure us of uncharitable nesse, if wee should dissolve this doubt with a *videtur quod sic*; for though it be a generall rule both of discretion and charity, that things doubtfull are to be construed in the better part: yet it is not a safe principle to be followed in deliberations

*Legis mutatio  
in se est quod-  
dam novum in  
Reipublica, nam  
ad observandū  
Legem pluri-  
mum valet con-  
suetudo. Du  
rand. de legib.  
questult ad 1.*



deliberations concerning the Weale of the Publick States: Yet it would have beene apparently very dangerous for our Kingdome, since it did necessarily induce an alteration in the profession and practice of the lawes, which by reason of their long use, are as it were naturalized into the manners and disposition of our Nation. *Tò ἀρχαῖον ἐγγὺς τῇ φύσει τῆς πόλεως.* It must necessarily have conferred ruines upon our Schooles of Learning, and Hospitals of Charity, razed the foundations of our Churches, confounded divisions of Parishes, changed the right and custome of paying tythes, with many such miserable inconveniencies, which were so in the Apostles times of miseries, in persecution. So that the State then would not venture to trie conclusions upon it selfe by this new receipt, but chose rather to feele the supposed paine, than to take the pill: and yet it hath subsisted, though not in that heighth of health, which that forme of government promised; yet in such a good competent continuance of reasonable well, that the present State also had rather endure the worst of the disease, than make the best use of the remedie; wisely considering that all their aggravated mischiefes were but casuall, curable, inconveniences: being as it were naturall defects that preserve from suddain dissolution, may with more ease and safety be endured, than cured in relation to the present estate of affaires. And if it must have made such a change in the entrance, what would it have done in the continuance? how would it have agreed with this Monarchie, that must have entered with such oppositions? so that I neede not to say much to discard it, for it hath enough in it at the first sight to keepe it out. *Sufficeret quidem schismaticam imperitiam propositione cecidisse. Ut Ennodius in Apologetico pro Synodo Palmari.* And I confesse, that, if I would, I cannot say much of it with any confident certainty, because indeed I doe not know, neither doe I thinke that

*Arist. Rhetor.  
lib. 2. cap. 11.*

Clapmar. de  
Arc. resp. l. 5.  
Quali Scandali  
partori in Ro-  
mal legge A-  
graria. Discorsi.  
lib. 1. cap. 37.

Plato de repub.  
lib. 5.

Plato de leg.  
lib. 4.

any of them doe, or at least ever have set downe in positive and plaine termes, the whole frame and face of this platforme, as they would have it received in this Kingdome. But as much as I conceive of it, and at the best and purest, it is a mixt Democraticall discipline, and it is not likely that a dissolute Democracie should long agree with this Monarchie. It is not my intent here to discourse of the nature of a Democracie, that I should shew the manifold consequent, coincident inconveniences, that doe naturally flow in with it, and follow it notwithstanding that *Machiavell*, in many of his discourses upon *Livie*, doth preferre a Democracie before any other forme, but rather wittily, out of a Paradoxically contradicting humour, than wisely, out of the weight and worth of sincere, sage, and serious arguments. And *Plato* saith thus much for it, in his *Idas* of a Common-wealth, *inter iniquas formas optima, inter legitimas deterrima*. For if it begin to degenerate into an Ochlocratic, (as I cannot conceive it possible, but it must, considering that liberty is the end and excellency of it) then it turnes to a most head-strong intolerable tyranny. For I am not of their opinion, that hold it a contradiction, that where a Democracie prevayles, there should at the same time be a tyranny. For the *Ephori* of *Sparta*, were (as the Tribunes of the people of *Rome*) chosen by the people, and out of the common people, and the conservators of their liberty. Yet I thinke there are but few that discourse of these *Ephori*, but they conclude, and condemne their government of tyranny. They cast *Pausanias* into prison, and *Thucydides* saith, that they usurped that power over, and against their Kings, for they put *Agis* junior to death, as *Plato*, *κατὰ Εφεβους τυραννίς ἐστὶ Λακεδαιμονίων πολιτεία*: i. e. in relation to the *Ephori* the *Lacedemonian* State is a tyranny; and they were set up to restrain their Kings. It is a hard matter to keepe that liberty with-

in

in its limits, in any Common-wealth, where it hath the  
 supream government, & therefore with much difficulty  
 will it submit to be governed by a free Monarchy, espe-  
 cially a Democracie of that new nature, which makes the  
 same persons Civill subjects, & Ecclesiasticall superiours;  
 those Lay Elders that are neither Ministers nor Magi-  
 strates, and yet must be governours in the Church, whose  
 jurisdiction doth destroy the nature of a Monarchie. For  
 all publique government in the Church, derived from  
 Christ the fulnesse of it, is either Prophetically, Sacerdo-  
 tall, or Regall; and they assume not any of these, but the  
 Regall, which is given in charge to supream Christian  
 Magistrates in a Monarchie; and therefore, if they derive  
 not this power from him, they establish a regiment a-  
 gainst him. So that if his power, doth not include theirs,  
 they exclude his; and he having no supereminent power  
 over them, as they impeach his right, so they will en-  
 large their owne liberty, till it be dissolved into a loose  
 licentious libertinisme: *in Socrate de reipublica*, (as *Polybius* *polybius Hist.*  
*lib. 6.* well expresse it.) And if they did not thus, it were the  
 greater vertue, seeing they must have such power unlimi-  
 ted by lawes left to discretion. And they would finde it  
 a hard peece of patience; to abstaine and containe them-  
 selves within such bounds of obedience, as this Sate ne-  
 cessarily requires. Can men that professe themselves  
 popular passe plausibly and please the vulgar if they doe  
 not to their utmost uphold them in their highest insol-  
 encies? *Tullius* found this impossible when as he with-  
 stood the people in *Leges Agraria*, for they cast him  
 off, and clave to *Rullus*, who would bee popularis though  
 it were but in *populations*: and as it cannot stand with the  
 power of our government, so it withstands the honour  
 of our Governour, debasing the Majestie of a Monarchie  
 into a popular paritie, without respect of His most sacred  
 person. In this it is truly Democratically; for as it was re-  
 ceived

Polybium Hist.  
lib. 6.

Nicetas Choni-  
ates de Situ Con-  
stantinopolis:  
Annal. lib. sin-  
gulari---

Gucciardino,  
Hist. lib. 2.

Hippocrates, pre-  
notion, cap. 11.

Psalm 65.  
He stillereth the  
noyse of the  
waves, and the  
tumult of his  
people.

ceived for liberty, so it must be upheld by equalitie: *πῖ-  
στοτα* cannot be fully freed without *ἰσότης*, and that is the  
reason that they presse a conformitie of our State Eccle-  
siasticall with the Apostles in meannesse of maintainance;  
(which would bee something indifferent if the Laitie  
would be under us as they were under the Apostles) but  
yet it would be as farre from a wise mans wishing, as that  
equalitie and conformitie which fell upon the *Patriarch*,  
and *Presbyters* of *Constantinople*, when it was sacked by  
the *Francones*; and yet that was approved and received  
by many of the popularity for a happie equality, as *Ni-  
cetas Choniates* their most rationall Chancellour judici-  
ously relates, & reproves their envious madnesse. οἱ πολλοὶ  
ἀγαθῶν καὶ ἐν πτωχείᾳ καὶ χειρὶ κακῇ ἰσότητάς αὐτοῖς  
ἐνὶ ὀνόματι: i. e. many of the *Plerbeans* madly miscalled  
their miserie and poverty, by the name of an equality. So  
that I cannot then conceive how any could apprehend it  
as a forme likely to agree with this State. This govern-  
ment at the best would bee like the spleene in the body,  
which is the subject of the dregs and and setlings of the  
humours, as a Democracie is *la feccia della plebe*, and as  
the spleene being not able to moove it selfe is not trouble-  
some so long as it is pressed upon by the heart, but per-  
mitted full and equall liberty, nor disturbed by a *Flatus  
hypocondriaci*, *κατὰ τὸν πνεῦμα τὸν ἀπὸν καὶ διὰ τὸν*, but once  
mooved *πλεγμαίνον δι' ἡ ἀνομαλίαν, καὶ τοῦτο τὸ θαυμαστόν*, af-  
fects the head and heart with turbulent distempers; so in  
a Democracie as long as they have all at their loose list,  
and are not compelled to keepe within compasse, but ap-  
prehend themselves equall to the highest in all respects,  
and are not mooved by some seditious spirit, they are  
quiet enough; *Nam multitudo, sicut mare, per se immobi-  
lis est*; but if once they perceive that any goe about to op-  
presse or crosse them in their false and fugitive liberty (as  
they are very suspicious upon the least cause) they pre-  
sently

sently are readie, but *Tentare magis quam tueri libertatem*:  
 and if any one dare but begin to blow a Trumpet of sedi- *Idem Ibidem.*  
 tion, (as they do not easilie) *statim ferox eris, si non ad bel-* *Veget. de re Mil-*  
*landum, saltem ad rebellandum. Nunquam ad contumaci-* *liar. lib. 3. c. 4.*  
*am pari consensu multitudo prorumpit, sed incitantur a pa-*  
*cis, qui ob scelera impunitatem sperant peccare cum plurimis.*  
 I doe confesse that this forme of government may be  
 of good use in some States at some times, as in a popu- *Machiavellus.*  
 lar State vvhhere these Lay Elders may be both Church *libi 1. cap. 5.*  
 and Citie Burgesse; as the Democraticall *Helvetians* ap-  
 proved it: so also, as for the enlarging of a Monarchie,  
 the Monarchicall is best; so for the settling of a Monar-  
 chie that Democraticall may be safest, and so may be the  
 best government vvhhen a State is not settled, but newly  
 erected: for then it is not safe to use severitie. As vvhhen *Curtius Histor.*  
 our State was not fully settled, *Martin Mar. Prelate* *lib. 5.*  
 dared to vent his discontented humours in salt rumors,  
 as men in rheumes: *In novo & precario imperio non sta-*  
*tim iugum rigidum cervici imponendum.* But it is good ta-  
 ming them by degrees, for then a Magistrate hath little  
 power to command, much lesse to restraîne; and therefore  
 it hath bin found the best course to let them take their  
 course: for *Mos est vulgo, mutabili subitas, & tam prope in*  
*misericordiam, quam immodicum sevitia fuerat:* and so by  
 indulgence finde, *Lascivire magis plebem quam sevitire.* And  
 I am persuaded that this discipline (so farre as it agrees  
 with the more private Primitive temporarie orders) was *Tacitus Histor.*  
 onely chosen for that time when the Apostles were under *lib. 1.*  
 persecution: and there were no Christian Magistrates to *Exempl. 11.*  
 repaire to for justice: then they appointed some to judge *Histor.*  
 betwixt brother and brother. But it doth not appeare that  
 they were Ecclesiasticall Judges, certainly no such Lay  
 Elders in the Apostles times as the Separatists now plead  
 for, but rather civill arbiters to make agreement betwixt  
 them in civill controversies, (as may appeare out of the  
 place)

1. Cor. 6. 4. &  
Hystor. Conc.  
Trid. l. 3.

1. Tim. 5.

Polyb. lib. 2.

Nil magis agri  
prodest quam  
curari a quo vo-  
lunt.

Seneca Cont. 5.  
Machiavellus,  
lib. 1. cap. 514.

place) though the author of the Historie *Concil. Tridentini* make that a ground for Episcopall jurisdiction. For the Apostles had no reason to delegate the cognizance of spirituall causes, because in those daies they were so few, and needed no prooffe for the discoverie of them; because they had the gift of discerning of spirits, and of knowing of secrets, and of prophecyng. And I do not beleeeve that it can be proved that they gave commission to any to receive accusations, (which is much lesse than to give judiciall censures & decisions) but to the Bishop of *Ephesus*: but I intend not to enter into controversies, neither need I, seeing so much hath beene already written in that point to good purpose by many most reverend Fathers of our Church. But to return to my intended discourse; this State of the soveraigntie of these seniors I grant to be of some use in free Cities in time of tumult; and so I do beleeeve Mr. *Calvin* intended it, yeelding to a popular paritie, and not as an universall perpetuall government for all truly reformed Churches. For though such a wise respected man as he was, might, during his time, preserve it in the same correspondent conformitie to his proposed pattern; as *Polybium* saith of the *Theban* Democracie *ἐκ τῆς πολυθείας οὐκ ὁρᾷ, ἀλλὰ ἡ τῶν πολιτῶν ἀρετή*, it stood not by the good temper of their policie, but by the vertue of their governours *Επιμερόνδου, καὶ Πελοπίδου*: so might it be said of the *Geneva* Church-government, that though, for the tumultuousnes which transgressed the bounds of lawfull subjection, many were the rulers of it, being a Democracie: yet by a man of understanding and knowledge, the State thereof was prolonged; for he could do much to appease seditions: as *Franciscus* Bishop of *Volterra* sooner settled a tumult in *Florence* by his grave presence, than the Magistrates could by the weight of their authoritie. It is plaine then out of this that hath beene spoken, that this government by popular Presbyterie is not for this State.



§.6 Neither of these being convenient, & there being but another, and it hath alwaies beene the government in this State; it must necessarily follow without any more prooffe, that this is most agreeable with the Civill. Those that are no well-willers to our State have stricke at our Church-government, with which there is such a happie hartie unitie, as dare bid the world doe as shee would be done to (as that absolute States-man the Earle of *Salisbury* replied.) And it is no marvell, since it is not onely the Primitive ancient government of the Church in generall; but the onely forme also that ever was received in this State, according to the ancient lawes of this Iland, though it seeme to be brought in under *Henry* the eight, when it was onely reformed from the evils, and restored to the former State: for our Clergie was not of right subject to the Pope, neither as he was Patriarch of the West, nor in his ancient province. And this Aristocraticall forme hath most happie qualifications that dispose it to the peace, profit, honour, and safety of the State. I could now wish with *Tully* when he was to write against *Democraticall* *Agrarian* lawes, *Vtinam Theophrastum & quoniamlib.* *Vbi multa scribuntur* *Aesopum*; that I might make a perfect parallell. After this Kingdome with many others had long laboured under a lingring consumption, being continually sucked, & in a manner exhausted by its continuall supplying of the Popes exchequer, which drew away the vitall spirits, weakned the sinewes of warre; causing extensions and convulsions: and farther also in respect of Domestique peace, it had not a just proportion of power to exercise its only civill and lawfull authoritie: inso-much that many who should have knowne what in possibilitie of State might be done for the recoverie of a temporalitie, distempered and distressed by the malignant humerous power of an usurped spiritualitie, like a fever in the spirits caused by obstruction. All those men gave it

Answer to  
scandalous pa-  
pers.

By B. Bilson of  
Christian sub-  
jection part. 1.

*Ad Atticum, lib.*  
2. capit. 3.

*Preservatio. dnc.*  
*Hippocrat. lib.*  
5. prog.

D

OVER



over for desperate, some conceiving the disease incurable in its owne nature, because that, *non obstante* the helpe of so many strong Statutes & purging privisors, the distemper was as violent, and more virulent than before; & they saw no safe and certaine course of preventing phyfick, for it was so far spent, as that it seemed to have passed the period of curing: after this I say as when men are brought to a desperate point they will trie conclusions, and they that drive them to it do often repent it: (for *Cum spei nihil est sumit arma formido*) so the Pope putting and passing our State upon desperate hazards, forced it to trie its strength, which is soone found; necessitie driving, and opportunity drawing: *Acervima virtus est, quam ultima necessitas extundit*: & so it cast such an unreasonable, unrulie rider, who thought, (and so did all Christendome) that he had sitten closer & faster upon our skirts, & would not beleieve that it was possible for a Parliamentarie power representing the State, ever to have been able to dissolve the great Abbies, (though they durst fully resolve it) untill they saw them begin with the little ones; then they had reason to grant it possible: *ὅτι ὅταν γὰρ πῶς ἴδωμεν τὸν ἀδύνατον, (i.e. nothing that is impossible was ever begun)* yea they found it fully finished, & that on such a sudden, that as it wrought admiration in the beholders, so it procured safetie to the actors. For in actions of that nature, haste only makes good speed. That the event of this action was good, is proved by the deliverance of the State. But for the action in it self considered, as I do not discommend it, so I will not condemne it, because I am not able to sift and search into the circumstances of it; but I will onely say thus much of it; Those actions that aime at, and make great alteration, though to the best, doe seldome keepe a mediocritie, especially in respect of that part of the Common-wealth, which is the subject of the alterations: as a strong, stirring

*Vegetius de re mil.* l. 3. c. 21.

*Senec. de Clement.* l. 1.

*Arist. Rhetor.* l. 2. c. 20.

ring Chymicall spirit-purge doth in a naturall body, that stirres up more than could bee mooved, and purges out good, as well as ill humours. But no sooner was our State thus delivered from under the tyrannie of the Ecclesiasticall Monarchy, but it as soone pitched upon the Aristocraticall government, as suitable and sitting best with the weale-publicke. And as all the Christian world did then in sincere judgement of State, *rebus sic stantibus*, approve their choyce, so wee have ever since found the happy effects of it, in the safety, honour, and treasure of the State. Consider it first, how it wrought little or no alteration in the receiving, being according to the lawes, taken by their owne choyce, restrained with the limitations of the Civill State. For all the turmoyle and tossing tumult, was onely in casting out the other forme; as a privation, before the induction of a new forme in naturall bodies. It was received without force, as most naturall to the Civill State, and no other could have bene brought in with such certaine good securitie of the State: for the Monarchicall at that time could not bee received, but either upon their repentance of what they had done, and by procuring of a pardon from the Pope, (as it was in Queene *Maries* dayes) or else by helpe of forraine force, joyning with domestick rebellion, as was often attempted. But this was not any thing safe for the Kingdome, as is already proved. And for the Democraticall discipline, there was great and certaine danger in receiving of that, for it could not possibly be conceived to bee received, but with a schismaticall sedition, since it was approved but by a faction; and doe but consider, how dangerous seditions are in an ancient kingdome; if it were now a settling, happily the vigour of youth would beare it out; as one maine reason (as I conceive) why the Roman Monarchy was not ruined by those foure first grand seditions, was because it was but *secunda aetas*, & quasi

*Hist. Concil.  
Trid. lib. 1.*

*Lucian Flamm  
lib. 1. cap. 22.*

*adulescentia*: But when a State is growing old, seditious are desperate courses to procure changes, though it bee for the best. For though the events of them be but doubtfull, yet the deciding-place is certaine of losse. But for this present forme, as it re-entred without a State-earthquake, without any shaking of the ground of the Civill government, so it hath ever continued peaceable, and a pacifier of growing differences, being the middle State of three, carrying it selfe as a moderating Mediator betwixt the King and the Subjects. And all this good, and much more proceeds from the temper of the forme of government. For it is the only forme fit to be under this Monarchie, because it will onely be easily ruled and ordered by the State, when as both the other will rule where they are entertained, although after a divers manner; one having dominion over the Civill, the other without it. But this is under the Civill, in relation to the head: and in it, in relation to the body. And as it is easily ruled, so it will not easily bee disordered, as the other will, though they should submit to be ruled for a time, till they bee able to resist. For ambition is so perniciously provident, that it will be something able to resist the power of its opposite, to get from under it, before it trie to goe about it. First, taking care not to be oppressed, before it endeavour to oppresse; for all the branches of rebellion, are rooted and hid in the depths of dissembled disobedience. But this is not so enclined; for if any forme of policie degenerate, it must be either into a tyrannie, an Oligarchy, or a dissolute Ochlocraty. Now an Aristocracie cannot be immediately dissolved, either into a tyranny or a tumultuous popularity. And it is not easie to conceive, how it should by any meanes, by the course of State-corruption, ever degenerate into a head-strong popularity of its owne accord, without externall force. And as little reason there is, why this should advance it selfe to a tyrannie,

tyrannie, by turning the Church into a court, & Religion into a vassall to ambition; for it must be first reduced and restrained into an Oligarchie: and there is no great reason in this point, to feare the Clergie in this Kingdome, all things considered. It is true (as all Historians and Politicks observe) that an Aristocracie is subject and prone to be corrupted into an Oligarchie: But doe but observe the end of an Oligarchie, and you will find, that our Aristocracie can have no such ayme; for their end is, to grow rich, as the States of Venice, and the Belgicke Provinces, and their Counsells drive at that end, *ἐν ἀρχαῖς βουλευόμενοι*: and according to this end, and this Counsell to it, hee that will prevaile in perswading with them, must deliberate; *in libera civitate, non ut apud reges, qua delenda sunt, sed que profunt suadenda sunt*. But our Ecclesiasticall Aristocracie is not to bee perswaded, having no such Counsells, because not the same end; only they may bee rich, if they did desire it, because being poore, they are a fit subject of wealth. The poverty of this Clergie hath charmed it against active ambition, so that one of the *Optimates* doe not looke higher than his Peeres, set with him in equall power and honour, in relation to their severall Diocesses, though the power of jurisdiction bee in some cases larger, in the Provinciaall Prelate: *Nemo nostrum Episcopum se Episcoporum esse dicit, neque tyrannico terrore ad obsequendi necessitatem, collegas suos adigit*: So that *per accidens*, the impoverishing of the Clergie in Henry the eight, when it seemed in the eye of some too rich for the Civill State, did this good, to preserve them from an Oligarchie; even as to take so much bloud away in a pleurisie, as to bring a man to a deepe consumption, is a probable preservative against dying of a burning fever. So that alteration of this State is not much to be feared, in respect they have no reason to alter it; and withall it is not easily altered, if they had this or any other ground

Earle of Salisbury his answer to scandalous papers.

*Arist. Rhet. lib. 1. cap. 8.*

*Sen. Suasor. 1.*

*Augustinus contra Donat. lib. 4. cap. 1.*

ground to doe it. For an Aristocracie in it selfe considered, is a government of a most constant, continuing constitution, especially when it is mixed and tempered with a Monarchy. For the reason of its constancie is not onely the slownesse of the motion, either to augmentation or diminution, like a great engine mooving with many joynts, in which point a Monarch will much advantage in advancing & setting faster forward, if not their deliberations, yet their determinations; and with ease and speed stay all their errours and declinings, while they are but in the breedings, beginnings, and begettings; but then also the force of their factions (which breaking out, are the common ruine of Aristocracies) will bee abated, as it may bee seene in the *Spartane* and *Venetian* States, opposed to the *Athenian* and *Florantine*. For these had an Aristocracie without a Monarchie, and were continually rosted with seditions and factions. As that long lasting faction of the *Guelphes* & *Gibellines*, which could never be fully taken away, but by the ruine of one partie; when as the *Venetians* their neighbours (whose Duke was then not a *Simulachrum imperij*) kept the faction out of their Common-wealth, though they did declare themselves sometimes on one side, and sometimes on another, lest they should have beene hated of all, as negligent neutrals; but they did not nourish the faction amongst themselves, but maintained it in other Countries, as they would doe warres. Neither could the State of *Millaine* bee free from it, untill it was extinguished by *Francisco Sforza*, who was a free Prince though an usurper: so that the mixture of a Monarchie, and the predominancie in an Aristocraticall State, doth not onely make it actively more able to offend, but more passively powerfully defensive, not onely by preventing and preserving from domesticke dangers, but also by recovering it out of them. And our present State Ecclesiasticall is thus mixed: (For I doe

*Sigonius de Re-  
pub. Atheniensis  
lib. 1.*

*Paulus Iovius.  
hif. lib. 6.*

*Belhar. lib. de  
summo Pont.  
cap. 3.*

do not urge a strict Aristocracie; *Ἀριστοκρατία* (as *Aristotle*) and therefore hath the best means of conservation in respect of the forme. And it hath one more prevalent preservative in the *Optimates* themselves, which is, that they are strongly disposed to this kinde of government, not onely by being of quiet contemplative natures, but also by being trained up under an Academicall Colledge-government, which doth first possesse them and fully please them, and is Aristocraticall, having the proper aime of that forme of government; *ἡ δὲ τῆς Ἀριστοκρατίας οὐκ ἐστὶν ἄλλος ἄλλος*, discipline according to law, is the end of that forme of government. And they then that aime at that, are most likely to preserve it, by persevering in their intentions; when as others that will devise new platformes, and seeme wiser than the lawes, do suddenly subvert or disturbe this most safe and settled forme of government. Witnesse the *Athenians* and the *Florentines*, who being of a stirring over-active temper, and alwaies doing, though it vvere to the undoing of things well done, changed this forme of State seven times; (which corrupting transmutations, I hope *Machiavell* their Country-man doth not call and commend under the termes of reformation, and reduction to their primitive principles, without hee will grant their prime originall order to be raised out of confounded confusions.) When as the *Perusians*, who have beene calme and cold, and constant in provident proceedings, have kept to the same forme without any fundamentall alterations, and that because they will be ruled by lawes; whereas the *Florentine* is so overweaningly wise, that hee thinkes he should Emperour-like rule and make lawes; *ἡ δὲ τῆς Δημοκρατίας οὐκ ἐστὶν ἄλλος ἄλλος*. So that *Bodinus* judgement of them and the *Neapolitans* is true; and approves him to be a most rationall Statist; *Dignos se esse imperio singulis arbiarentur, ad populare imperium magis quam Optimatum inclinati*. But suppose

*Arist. Rhet. lib. 1. c. 13.*

*Thucydides l. 3.*

*Machiavellus l. 3. c. 10.*

*Contarenius de Rep. Venet. l. 2.*

*Arist. Rhet. l. 2. cap. 13.*

*Bodin. de Rep. l. 5. c. 2.*

pose



pose this government should be disordered, it is easiliest reformed againe, which is a point of very great safetie, it may be done without any stirres of tumults, and speedily, for it hath not that power to resist authoritie, which the other two formes have; and that because it useth not the meanes they doe to procure it. For the Monarchie of the Church of *Rome*, and the Democraticall discipline, stirre up the vulgar, and rely and rest upon them for assistance, and defence, and therefore they endeavour to wooe and winne their hearts; that they may use their hands and purposes: yet they do it divers waies: as the *Romanists*, amongst many other wayes, they get into their hearts at their eares by auricular confessions; they hold them by their eares, yet not so much by the confession of of their sinnes as of their secrets, under the colour of cases of Conscience; which abuse of that wholesome counsell of the Church hath made many doubt of, and some condemne the good use of it, and since that was laid downe, and confessions cast off, all kindes of sinne have infinitely abounded: even as the *Persians* after they had by their *Septemviri* cut off the *Magi*, that usurped too much temporall power under the pretence of their spirituall authoritie, and then kept their feast called *Mazdeevia*, never after solemnized their great and good festivall called *Virtiorum interitum*, which consisted in the killing of serpents, and venomous hurtfull creatures, & the sacrificing of them up to the *Magi*, expressing by way of Embleme the destroying of vice in themselves, with the solemne signification and confession of it to them to whom they were to give an account: and by their eyes also they fascinate their fond fantasies with superstitious ceremonies, exquisitely intricate, full of mysticall and magicall mazes, broached by fancie, continued & countenanced by fables, consisting in the masse materialitie of bodily exercise, as may be seene in the austeritie and State of an *Austrian* penance,

*Brissotius de  
regno Persico.  
l. 2.*



nance, or in a Pontificall profession, where all is done with such concealed secrecie and silence, that nothing is prostituted to be polluted by the unsanctified view of the vulgar. Thus by feare mixed with delight in superstition, they can lead them as they list, and engage them in their quarrels, and bequeath to them their dangers they have pulled upon themselves. The Disciplinarians are not only endeered to them, for the forme and frame of their government, & for their novelty, but they make use of superstition also to hold them, and to have them at their becke; but in a course cleane contrarie to the other, for they undoe all the other have done, in point of ceremonie, without consideration whether it be good or bad, and that out of a superstitious rage, as the other did out of feare: (for superstition is grounded upon either of those passions.) And as their feare was mixed with pleasure in the end, so theirs is mixed with profit, when in the destroying of the superfluitie of superstition they enrich themselves with the spoyle, & save charges in ornaments. Which profanenes of theirs, is in some respect worse than their superstition, & it many times ends in Atheisme. For though they were consecrated after a false manner, yet they were dedicated & devoted to the true God, & should not be profaned to common uses, but sanctified by a new and true consecrations as well as the Churches wherein they were. Thus those formes of Church-government have power to withstand the reforming rod of authoritie. But our present State useth no such meanes to stand out a rebellion, because if it offend, it rather proceeds out of weaknesse than wickednesse; from scholasticall indiscretions that deserve, rather pittie than punishment. For it is not likely, that they would disturb the State, who shall certainly lose that little they have by it, rather than get more: *Miles qui scit sumptus suos apud signa depositos nil cogitat de Vegetius de re*

Thou that abhorrest Idols  
committest thou  
sacriledge?

Rom. 2.

E

seditione milit. l. 2, c. 20.

*seditione aut fuga.* I find, that amongst those Prelates that have troubled & turmoyled kingdomes, *Peters* pretended successours have onely gained by fishing in such troubled waters. And as they can have no end worth their stirring, so their naturall inclination is not so perniciously pragmaticall, they are farre from the tricks of troubling projecters; & all actions proceed either from our generall end, or particular inclination; & this inclination is fortified & confirmed, if not formed & framed, by their studies, which have a great influence into the disposition. I have not, in this discourse, entred much into the commendation of an Aristocracie in generall, preferring it before a Monarchie, partly because I feare lest some should serve mee as *Castellanus*, a French Philosophie-reader (who as I conceive, was *Ramus* his Tutor) served his Antagonist *Bogotinus*. For when *Francis* the first was desired by some of his Nobles, to read *Bogotinus* his Disputations, *Castellanus* told his Majestic, hee was an *Aristotelian*, and *Aristotle* preferred an *Aristocracie* before a Monarchie, and so took off the Kings affection from him. But hee might be so excused, because I do not beleieve it was *Aristotles* judgement, but his policie, to dissuade all others from affecting it, that his Master *Alexander* might effect it. But I do purposely forbear it, because it was not my proposition, that an *Aristocracie* is simply a more convenient forme of State than a Monarchie; but that this *Aristocracie* is more convenient for this State at this time, considering that it was received with an universall consent and desire of all, and hath its right according to the lawes, is most easily ruled by them, not easily nor suddenly disturbed or disturbing; and most easily reformed if it be disordered: so that I may now undeniably conclude, that the present State Ecclesiasticall is most convenient, and best agreeing with the Civill.

*Arv lesnitica est  
Monachismus  
practicus, Baria-  
cus de arte Je-  
suit, introduct.*

*Thuanus hist.  
lib. 6.*

## A DIGRESSION DISCVSSING

Some ordinary exceptions against  
Ecclesiasticall Officers.

**T**Hough none bee more loath and fearefull to come within the lists of controversies; yet seeing all that I have already positively discoursed, is not onely controverted, but also contradicted by these exceptions; I resolve to dissolve and dispell them, least they should by a darke reflexion cloud my cleare proceeding. And I am not a little confident in my purpose, when I consider whose cause it is that I undertake, even the most able advocates of the Church, such powerfull pleaders as are infallibly sufficient to defend both their cause, and me their poore defendant; for they are absolutely able (if their conscience would but dispence with their understanding) to make a bad cause, if not good, yet plausible by putting it in a good case; so that I am encouraged to undertake it with this consideration; that where I am found weak and wanting, they are sufficient and ready to succour and supply; if they shall apprehend the exceptions peremptory and pertinent, and any impeachment to their practice and power. As they that have made tryall of their strength have found, though they were of the strongest & most popular partie, which they the more wondred at, since they knew they had but few friends, and themselves

*D. Confins his  
apology for  
proceeding in  
Courts Eccle-  
siasticall.*

small in number, especially in the beginning of the reformation where there was such scarcitie of Civilians, that the Universities toke little notice of their degrees or profession, or the Courts of their practice: but now we have a most happy and hopefull increase, and it were to bee wished that the Land were more stored with able Civilians, though they be not pragmatiques; I meane that the knowledge of the Civill law were more regarded, though the practice keep but the same degree of respect; for then should wee have more able Common-wealthes men at home, and more absolute States-men abroad: for all the Nations round about are ruled by the Civill law, as we are by the Common law: onely they have some particular decrees, manifestations, and sanctions, as we have Statutes and Acts of Parliaments: and so by that law the treaties we make for matters in question are to bee decided by that law: that which is determined by consultation, and agreed upon, is to bee concluded: so that it must needs be, that hee that is well seene in the Civill law is best able to treat with them with more honour & lesse danger to the State; for in them there is onely the feare and danger of perfidiousnesse, whereas the other may want honesty and ability both, though their instructions bee never so punctually accommodated. And this is one maine reason (as well as the Popes power) why many Deanes, Bishops, and Lord Chancellours, who were Doctors of the Civill law were sent Embassadors, when the Nobility had not so much law and learning as now they have; so that for this last present age we have not lost so much in treating with France, where the Civill law is most practised, as to confirme or continue the Proverbe which I finde mentioned

*Comment. Lud.*  
11. lib. 4.

in *Phil. Commin.*: *Pactio nulla inter Gallos & Anglos.* in which the French did not get the better, adeoque proverbio dicitur apud Anglos, quoties cum Gallis praelio certaverint, victores plerumque fuisse, quoties verò cum illis pacti

*pacti sint detrimentum semper aliquid accepisse*, which was most verified from the time of Edward the 3<sup>d</sup>. to Queene Elizabeth; but it is probable their over-reaching was much helped forward by dishonesty, where they found any little want of ability: but grant it were the disability of our agents, especially in the ignorance of the proceedings and advantages of the Civill law in businesse of trans-action, wherein the *French* were defendants and passive: yet it was not an honourable advancement to them, though it were some small disadvantage to us: for it is a dishonour for a Prince to stand strictly upon termes, tricks, and turnings of law in the interpretation of treaties: as *Maurice Duke of Saxony* told *Charles the fifth*, when contrary to agreement, he detained *Philip Landgrave of Hessen*: as ego (saith he) *se tanquam imperatorem, non tanquam juris-consultum & legistam, volo pactiones & fœdera interpretari*. But since treaties are too often so interpreted, it is in all probability a great assurance of safety in treating to understand the Civill law, at least in the proceedings; and hence it is, as I conceive, that in *France* and *Italy* it is so much esteemed, so that in *France* most of the ancient Nobility were students in it, and had amongst other priviledges, that they may take the degree of Bachelour at law in three years, as it is plaine in the Pragmaticall sanction, which particular is also confirmed by the *Concordata Gallica*, by *Leo the tenth*. *Baccalaureo juris Civilis si ex utroque nobilis, triennium satis erit*. In *Italy* also it hath beene highly esteemed, especially in the first reviving of it under *Lotharius secundus*, in the yeare 1135: who found a copie of the Digest and gave it to the *Pisans*, which was then called *littera Pisana*: but when the *Florentines* tooke *Pisa* (as *Laurence de Medicis* told *Politian*) it was translated to *Florence*, and made *Pandecta Florentina*: *ibi verò in curia loco celeberrimo summa religione servatur*: and they did not use in those dayes in the first erecting of their

*Carolus Molinæ  
in consilio se-  
cundo in causa  
Philip. Landgr.  
Hessæ.*

*De legibus  
et consuetudinibus  
procedendis in  
Concordat.  
Prag. sanctione  
tit. de collatione  
bui.*

*Concordat. Gal-  
lica tit. idem.*

*Angelus Polit.  
lib. 1. epist. 4.*

their Dukedome, to esteeme any thing which they found not beneficiall for the State. But I leave the commendation of the knowledge of that Civill law to those that know it better, and have found the helpe of it in long publique practising; and betake my selfe to my understandings, to discard some exceptions against the professors of it, who are Officers, practising in Ecclesiasticall affaires. They are excepted against by some that are of the faction of irregular Protestants.

*Exception 1.*

That though the Church of England approve not the Geneva discipline, yet the principall point is practised in it; in these our Lay Elders. Thus they seeke to disfigure our government, by reporting it to be confused and wanting uniformity. But to discusse & discover this groundlesse exception, the very supposition whereon it is grounded is absolutely false; for though we will not deny that our Ecclesiasticall Officers bee Lay men, yet we will not grant them to be Elders of the Church: we have no such Church-Burgesses, neither doe they take any such Eldership upon them, since they know full well that it belongeth onely to spirituall persons; which they confesse and professe they are not: as that profound Civilian Dr Cousins. *We are no spirituall persons, as some would have us, but Ecclesiasticall*: now in my understanding there is as much difference betwixt a Spirituall person and Ecclesiasticall, though he be a Canonist, as betwixt *Ecclesiastes* and *Ecclesiasticus*; the one of which is Canonically, the other Apocryphall. I dare then without any scruple grant them to be Lay men; not onely because it takes away the ground of the exception, but also because it is not any hinderance to their being Ecclesiasticall Officers: for the Canon law, which is very strict in this point, admits a threefold division of Ecclesiasticall persons: as, *primo, in sacris, secundo, in sacris & sacerdotio; tertio, nec in sacris, nec sacerdotio, ut monachi & legisti ecclesiastici*: and so doe the

Dr Cousins his  
apologie for  
proceeding in  
Courts Ecclesi-  
asticall. 3. part.  
cap. 16.

chiefest



chiefest among them account themselves, for they are well contented to go for Commons in the high Court of Parliament. Yea a most eminent Chancellour of late refused when his Bishop would have chosen him a member of the Convocation-house, and that because hee held himselfe a Lay-man; and so they live in our particular parishes as other Lay-Parishioners, paying Church dues, and are alike subject to the jurisdiction of their appointed Pastours in *foro conscientie*; and in thus doing they do declare their exact knowledge in the Canon Law, and pure practice of the Civill: for by the Common Law where *Doctores divini & humani* are opposed, Doctors of the Civill Law, yea and Canon also, are counted *humane*, and Lay Doctors: for the Clergie (as *Brissoni* defines it out of *Suidas*) is *ἐκκλησία τῶν δακτύλων καὶ τοῦ στήθους*. But fully to cast off this exception, I deny them to be Elders of our Church; for Elders here I understand in relation to Church government, and in that sense there are no Elders with us in our Church but our Ordinaries; and our Ecclesiasticall Officers are not Ordinaries, neither do they usurpe any such power; but their modesties are many times forced to take the tune of the title from some obnoxious fawning Clergy-men, who are more sordidly slavish than they would have them: insomuch that though in discretion they will not say to them as *Tyberius* did to the servile Senate, *O homines ad servitum paratos!* yet they cannot chuse but thinke so; for they know that by the Canon Law there is no Ordinary *Iure* but a Bishop; per *Ordinarios Iure intelligimus Episcopos*; neither any by privilege and custome but a Deane, or an Archdeacon. And they do as fully understand that in this Church there are none but what the Canon Law allowes: as *S<sup>t</sup> Thomas Smith* in his discourse of the Common-wealth of England saith: by an Ordinarie wee understand a Bishop, or sometimes an Archdeacon, or a Deane, who are so by privilege, or a long prescribed custome.

*Guymer Comment: in prag. sanction: promissa.*

*Brissonii Lexicon.*

*Tacit. Annal. lib 3.*

*Extrav. Johan. 22. d. prabend. c. 12. de excessu. lib. 5. ceterum. Lyndwood provin. d. consue. c. exterior. verb. Ordinarii. Sir Thomas Smith de reb. Ang. lib. 3. c. 8.*

custome. Now they are not Archdeacons, nor Deanes, as I would they were, and many of them have beene heretofore, as *Petrus Blesensis* Archdeacon of *Bath*, who was Chancellour of *Canterburie*, and Chaplaine to *Henry* the second: for then this exception and all others would be of no force. So that they are no such Ordinaries as are Church Elders within us, I will grant them in a large sence to be Ordinaries, ( as *Gwymerus* the pragmatique ) *Ordinarios late volo collatores beneficiorum, & Patronos Ecclesiasticos*, ( as *Glanvill* calls Patrons ) *Advocatos Ecclesia*, in such a large sence as may be extended to these Ecclesiasticall Officers: but Ordinaries properly they are not, and that appears out of the offices they execute in relation to these Ordinaries, for they are their Deputies, Delegates, Vicars, Officialls, or Commissaries, which are officers distinct and derived from their Ordinaries: of all these the Bishops Vicar hath most reason to be tearmed an Ordinarie, and yet hee is none: not onely by the Civill Law which makes him a Minister of his Ordinarie, *Vicarius est qui suo Ordinario subministrat*, but also by the Canon Law, ( as *Prateus* ) *Vicarius & Ordinarius distinguuntur, nam Vicarius est quasi servus in peculio*: ( or as *Suidas* calls him ) a substitute, *Birdet & rægi sequialis Nidibx*: and *Panormitanus*, *jurisdictio Ordinaria non extinguitur per mortem illius qui dat, jurisdictio Vicarii est suspensa suspensio Episcopo*; and *Durantus* affirms as much *Vicarii nequeunt officia sua exercere Episcopis eorum excommunicatis*, and therefore they do well in claiming no such power, as *S<sup>t</sup> Thomas Ridley* learnedly discovering the originall and reason of their practice in the Church, concludes, that Civilians or rather Lengists, who were anciently called Church-Lawyers or *Ecclesiedici*, were brought into the Church to direct the Bishops and the Chancellours, at this day are the very same in office with them, being assistants of the Bishops in their jurisdiction.

And

Comment. in  
prag. sanction.  
rit. de collat.  
§. Ordinarios.  
*Glanvil. l. 4. c. 1.*  
*Clericus possit  
esse Advocatus  
in parva Ecclesi-  
astica, sed raro,  
non ordinario,  
ut Aug. de An-  
cona de potest.*  
*Pp. 9. 112. Itaq;*  
*Brissonus Lex.*  
verbo *Vicarius*.  
*Prateus Lexic.*  
juris Can. verbo  
*Vicarius*.  
*Panormitanus de  
decretal. de jurisd.*  
*Durantus in  
specul. lib. 1. par.*  
*1. tit. de iudice  
delegato.*  
*Sir Thom. Rid-  
leyes view of  
the Ecclesiasti-  
call and Civill  
Law.*

And S. FRANCIS BACON in his cautious consideration of Sir Francis Ba-  
Church government, agrees with him in the approbation cons considera-  
of a Bishops being attended by his Chancellour, who tions to his Ma-  
should be learned in the Civill law for his better instru- jestie. 2.  
ction in points of formalitie, in the proceedings & cour-  
ses of their Courts. And for the same purpose should  
Deanes and Archdeacons have their Officialls and  
Commissaries to inable them to runne through the  
multiplicity of causes, to cut off or shorten delaies, which  
in all businesse, especially Ecclesiasticall, are tedious and  
odious: and indeed none are more able in this case to  
assist them, and reduce causes into order, brevity, and  
paucity: So that wee may safely say of them in this point  
as much as Thomas Aquinas said of his *Summa Theo-*  
*logia*, viz. That hee compiled his *summes* to compose  
& compound controversies, to take up and take away all  
questions: so were they received into the State Ecclesiasti-  
call to helpe and hasten in proceedings when causes spiri-  
tuall were multiplied and involved. And therefore I doe  
not a little wonder at Dr Cowell who was a most able Ci-  
vilian, that hee should account Commissaries or *Officiales* Thomas Aquin.  
*foraneos*, only usefull in pettie peculiars, exempt from the *prafat. ad sum-*  
jurisdiction of the Archdeacon, other wise to be superflu- *mar.*  
ous & a needlesse vexation and oppression to the Country:  
surely hee meant it of some such scandalous Courts as  
*Duarenius* (another learned Civilian) complaines of. *Au-*  
*ditoria Vicariorum & Officialium Episcoporum, quacun-*  
*que profana tribunalia, imposturis & strophis forensibus, lon-*  
*ge superant:* but let him thinke what hee will, I am sure we  
see of what good use they are, and yet they are not Lay  
Elders of the Church.

Except. 2. Is, that the power of jurisdiction Ecclesiasticall, Exception 2.  
cannot be granted to Civilians, that are meere Lay-men.

I could soone answer this exception, by denying them  
to be meere Lay-men, and so I would, if I had no other

*Lymwood prov.  
de pralati vice,  
c. c. ut  
omni. verb. ad  
firmum.*

way to avoid it. But I am willing to give them satisfacti-  
on, and not to cavill, and therefore will answer punctual-  
ly: and that I may so doe, and they so apprehend it, let  
them but consider with mee a two-fold power of Eccle-  
siasticall Jurisdiction, Ordinarie and Delegate; the latter  
and lesser of which, may be lawfully granted to them;  
especially, if wee admit the differences and degrees of  
their commission, which are approved and practised in  
our Church-government; both in relation to the power  
that grants them, and in respect of the extent of the grant.  
First for the power granting them, they are all origi-  
nally derived from the Crowne; but some have their  
power more immediately, as the high Commission have  
it under the broad Seale, others receive it more medi-  
ately from their Bishops, Deanes, or Arch-Deacons: so  
for the largeness of the Commission, which is *ad uni-  
versitatem causarum tanquam Ordinarius*, as the audi-  
ence of high Commission and not without good reason,  
since no cause is to be there entered without the proceffe  
be subscribed by one of the *Quorum*, (which must be,  
as I am informed, Bishops:) There is also a speciall  
Commission of *Oyer and Terminer*, in some particular  
causes: and lastly, a Commission, which, according to  
Law, is *restricta ad instantia*, which Lymwood Officiall  
of *Canterburie* saith, doth belong *officialibus principalibus*,  
which wee call Chancellours: Yet I doe not beleieve  
(by his leave) that they are so restrained, as to a bare  
cognition, without a definitive sentence, though the  
phrase, that is used to expresse businesse of *instancia*, be  
matter of Ecclesiasticall cognizance: for, *Cognitio non  
est jurisdictio*, especially now since the Lawes have orde-  
red, that if they be not in sacred orders, they must be  
assisted by a surrogate, who is a Minister, and hee is to  
pronounce sentence as principall Judge, which practice  
hath made some of opinion, that anciently they were as-  
sistants

*Lymwood pro-  
vinc. c. frequen-  
de sequest. verb.  
officialu.*

*Enjunctio in l. 2.  
de reg. jur. Civ.  
§. Consul.*

sistant to the surrogate, as assessours; which seemes probable, because the exact knowledge of the law is expected from an assessour, not from the principall Judge (according to the most conscionable Casuists:) *Ignorantia juris non est peccatum in iudice, sed est in assessore;* as in the Masters of the Chancery, who are assessours to the Lord Chancellor or Keeper, there is required exact knowledge, though not in the superiour Judge; as in the assessours of the Prætor amongst the Romans: *Si Prætor per imperitiam juris iniquum jus statuerit, non punitur; assessor ejus punitur, quia adfessor se pro jurisperito agit:* So that though this opinion bee not true, because surrogates are not of such antiquity, yet I perswade my selfe without any doubt, that they were, and still are *tanquam assistentes assessores Episcopis & Archidiaconis*: though they have also a delegated power. And this kinde and degree of Ecclesiasticall power may be granted to them, though they be meere Lay men: and I beleeve our Church would not have disliked the *Geneva* government so much, if they would have chosen such for their Lay-Seignours, as had knowledge in the Ecclesiasticall lawes: as if Doctor *Hottomam*, Professour there, and Reader of the Civill law, had beene joyned with reverend *Beza*, then Divinity Reader.

Another Exception of like nature and moment, arising from the former, is, that under the colour of a delegated jurisdiction, they take upon them Episcopall jurisdiction, and performe all the offices of a Bishop, in relation to Ecclesiasticall government. Exception 3.

This Exception is not peremptory, but dilatory and declinatory, full of impertinent surplussage, urging nothing, or that which is false; for no man will undertake to answer what they doe, but what they should doe: *jura nostra Ecclesiastica*, I am sure *jura nostra Canonica Anglicana* publickly knowne, and by the Old Canon law

which may here be practised, (where it is not contrary to the lawes of the Land) they are not to exercise any such power, as doth personally belong to a Bishop, either as he is Diocesane, or as he is Ordinary, *in puris spiritualibus*. Neither doe I finde, that ever any Vicar did usurpe or desire any such power, but onely Cardinall *Wolsey*, who desired *Clement* the seaventh, *a facto suo vicario universale in Francia, in Inghilterra, & in Germania, mentre stava in prigione*, to make him his Vicar-generall in France, England, and Germany, during his imprisonment; which he could not doe by law, being his Ordinary and suspended, if not *ab officio*, yet *a beneficio*: and if it had beene lawfully yet the Pope had betrayed his weakenesse much to grant it, with that condition, during the time of his imprisonment: for the Cardinall who was then mediating his liberty, would without doubt have endeavoured to keepe him there still, to continue his Vicarship. And moreover I finde, that by the Canon law, *sede vacante*, the Deane and Chapter is successour, or rather administratour to the Bishops in their jurisdiction, and guardian of the spiritualties: yea, and in some cases, *Capitulum supplet negligentiam Episcopi in collatione beneficiorum*. And no marvell, for they are called *fratres Episcopi, ut Cardinales Papa*: they can dispense *in causis Episcoporum reservatis, & convocare capitula ad quae Episcopi Vicarii non admittuntur & possunt condere & revocare statuta*. And during the life of the Bishop, the Arch-deacon is *Vicario iure* (as *Zerola*;) *vicarius natus*, (as *Hofstiensis*;) which they understand in respect of jurisdiction *in spiritualibus*; for not they, but the *Archipresbyter* is Vicar *in divinis*, which is, *in spiritualibus*, in relation to the power of Order: So that you see, they take not any such ordinary power upon them, but leave it to the Bishops, and their most naturall and lawfull Vicars in that power: and yet they bee their Vicars in *Pontificalibus* (as the Canonists

expresse

25. Hen. 8. c. 3.

Summa bullarū  
in Pio. 4.

Guicciardin.  
hist. lib. 28.

Thuan. hist. l. 1.

E. licet Magister  
ent. de suppl.  
negl.

Lelima Zecchi-  
an de prarog.  
capitul. §. 13.

Zerola in prax.  
Episc. verb.  
Archid.

Formula visita-  
tionis Colonien-  
sis.



expresse it) which is, in those causes that belong to their Sees, as they have peculiar and prerogative Courts, and such may bee Lay-men according to the most moderate moderne Decretists: *Syndicos* (saith *Duarenus*) *sive defensores, & apocrisarios sive responsales laicos posse esse*: though by the old Canon law *Vicarius Episcopi debet esse Clericum*. And it is counted one of the insolent rare actions of the Popes, *causas Ecclesiasticas Laicis delegare*. This jurisdiction they may have without any trenching upon the office of a Bishop in his personall jurisdiction, which I conceive cannot bee delegated to a Lay person; being that jurisdiction, whereby hee doth exercise and execute his corrective, coercitive, coactive power, which is the instrument of his pastorall paternall care over his Clergie, and proceeds from the power of consecrated order, and is inseparably united to it: which power, I finde fully, yet briefly expressed by St Cyprian, speaking of a contumacious Deacon to his Bishop: he advieth the Bishop, *Vigore Episcopalis cathedra aut deponas eum aut abstineas*, either to degrade or suspend him: neither of these will a Lay delegate doe; yet I grant he may suspend, though not *ab officio*, yet *à beneficio*. And for their visitations, which are an act of ordinary jurisdiction, they performe them not *ex officio*, but by a speciall commission. And for the forme and force of their inquisition in them, it is not generall concerning the doctrine and manners of the Clergie, but directed and restrained according to the Bishops Articles, and without requiring an oath of the party presented; *visitatores interrogabunt absque exactione juramenti*. And *Linnwood* also insinuates as much: *Officialis & Principalis habet potestatem cognitionis, non inquisitionis, nec correctionis*. Yet I doe not disapprove that an oath should be required upon a fame, because it respects as much the purgation, as the conviction of the jurant.

*Duarenus de officiis Eccles. lib. 2. cap. 19.*

*Durand. de o-  
119. Jurisdic.  
Eccles. Con. 2.*

*Cypr. Epist. Ro-  
gat. Episc.  
Suspendus à be-  
neficio aut à  
pontificalibus  
non incurrit in  
irregularitatem  
si officium execu-  
tus est; nam sus-  
pensio à beneficio  
non extendit ad  
ordinem.  
Lelius Zecchius  
de causis Episc.  
reservatis de  
suspens. num.  
14.*

*Formula visit.  
Diocesis Colo-  
mensis.*

*Lynwood de se  
quest. verb. vica-  
rios generales,*

*Lelius Zecchini  
de causis Episc.  
reservat. de in-  
terdic. Num. 30.*

*De perpetua  
guber. Eccles.  
cap 14.*

*Lelius Zecchini  
de casib. Episc.  
reservat. casu  
3. Num. 2.*

And for the sentence of excommunication, which some make the proceſſe of spirituall Courts, in point of contumacy: I am not able, I confesse, fully to satisfie in that point. I am sure it is farre more effectuall than a suspension, though *ab officio*; and it cannot be a personall interdiction, because there is no expresse caution of relaxation: nor a bare prohibition, (which the Canonists call a *cessatio à Divinis*) because that is not an Ecclesiasticall censure in Consistory, but is good out of Court: But bee it what it is. I dare subscribe to that judicious Bishop *Bilſon* saith of it, to cleare it; who, I am sure, could and would say as much in the behalfe of Ecclesiasticall Officers, as any Bishop of his time, who speaking of the power of Excommunication, saith, *Nequaquam sibi clavium potestatem assumunt, sed penam ob contumaciam infligunt, quâ omnes illa animadversiones continentur, quæ legibus in eos sancitæ sunt, qui claves Ecclesiæ temerè contemnunt, quocumque nomini appelletur, sive suspensio, sive condemnatio, aut excommunicatio nil refert, dummodo ne potestatem hanc divino, sed humano jure sibi vendicent, nil causa tunc est, quin Judices civiles delinquentem in penam Canonis incidisse declarent.* Which opinion of this learned Prelate, carryed along with the Praxis of the present Canonists, gives full satisfaction: for they distinguish the sentence of Excommunicaton to proceed *vel à jure, vel ab homine*; à jure ob culpam non nisi mortalem fertur, ab homine potest ferri ob solam contumaciam, & sententia juris durat mortuo statuente: sed sententia quæ ab homine fertur statim cessat eo mortuo vel amoto. But the maine ground of these and such like exceptions, is, because Civilians are not in orders with us, as most Canonists bee beyond the Seas, though they have no title, and are but *Presbyteri Uropiani*, (as *Duarenius* calls such) when as with us not Ecclesiasticall Officers alone, but the Assessors also of our high Court of Conscience (which

be

be or should be spirituall persons and Civilians ) are not onely qualified to hold a benefice with care of soules, but also dispensed with to be *non-residents*; as the Master of the Rolls, the Deane of the Arches, the twelve Masters of the Chancery, the twelve Advocates of the Arches, and all Chancellours, and Officials. If then our Ecclesiasticall officers were all in orders, as some of them are, then they could not with any reason except against them for Laymen, no more than they can against the Pontificall Canonists, who have farre more Ecclesiasticall power, and especially the Moderne Legists, and are as able to judge of heresie, as the Duke of Bavaria in the time of Pope Zachary, who condemned *Virgilius* Bishop of *Salzburg* of heresie, because he affirmed, that there were *Antipodes*, when as *Isidorus Hispalensis* was not so much as publicely questioned for holding hell to be at the *Antipodes* neare three hundred yeares before. Yet these are the onely men that are now Judges of heresie, which makes modest Melchior Canus complaine, *Non video quoniam consilio in cognitione hereseos, partes prostruamur dicam nulle theologis permittantur: jurisconsultis vero vel prima, vel etiam omnes*. When as with us, not our Chancellours, nor Commissaries, nor our Bishops alone may determine of heresie: & yet I beleve any of them have as infallible assurance of truth, as immediate vocation, commission, assistance by inspiration, as all they; but onely they are in orders, and all ours are not. As the twelve Auditors of the overruling Court of the *Rota* are the Popes Chaplaines by their office, ( as *Leius Zecchini de auditoribus Rota* ) and so are those irrefragable Referendaries: and the Popes finde great good in having them in orders: for you shall not finde, but the Canonists have alwaies stood for the Popes prerogative; but onely in *Concilio Pisano* ( *Gnicciardine* saith ) they that were for the Councell which was called against *Julius secundus*, by some of Lewis the twelfthes

See the last pro-  
viso to the Sta-  
ture *Non resid.*

*Aventin. An-  
nal. l. 3.*

*Thom. Aquinas  
suppl. qu. 93.  
Art. 9.*

*Melchior Canus  
l. 8. c. 7.*

*1. Eliz. 2.*

*Ed. Zec. de rep.  
Eccles. cap. 11.*

twelfth the faction, *Che de canonisti autorita del convoca-  
re Concilii, nelle risedere solamente, persona del Pontifice.*  
*i.e.* The Canonists were of opinion that the authoritie to  
call a Councell was not onely in the Pope. But it was not  
so much the Canonists, as one principall one, which was  
*Philippus Decius* of *Millaine*, where the Councell began,  
who defended the cause, (as appeares out of *Carolus Mo-  
linæus* his Annotations upon *Decius* counsels,) so that the  
Popes knew what they did when they shewed and gran-  
ted so many favours and privileges to the Universtie of  
*Bononia*; as *Gregory* the ninth dedicates his Decretals to  
*Bononia*, so *Boniface* the eight his Sext, and *Iohn* the two  
and twentieth his Clementines, and Extravagants. Thus  
they are formally qualified by orders; and because our  
Ecclesiasticall officers are not all so, some take and make  
these exceptions: so that I will conclude this briefe Di-  
gression, with this wish, not altogether void of hope: I  
would more of our learned Civilians were Divines, or  
more of our judicious Divines Civilians, *Quam Theolo-  
gia & Ius Canonicum fraternizent.*

*Guice. hist. l. 9.*

*Car. Mol. An-  
not. in Decii  
Consil. 37.*

*Brissonus de  
antiq. juru Ci-  
vilis li. 4. de jur.  
Divino & hu-  
mano.*

*Alban Parnorm.  
in C. super spe-  
cula. Extr. ne  
Cler. vel Mo-  
nach. n. 7.*

THE



# THE SECOND CONCLVSION.

*That vnder the dominion and protection of this  
Civill State, this State Ecclesiasticall is most  
likely to enjoy all those rights that can any  
way belong unto it.*



Though they that sit at the tops and steerns  
of States, amongst all their great and grave  
cares, doe little regard the opinion or cen-  
sure of private men, since they are not  
bound to give a reason of their Lawes, nor  
an account of their actions, their admini-  
stration being absolute. Yet if by these Lawes, private  
persons deserve and suffer publicke punishment, not only  
for offering private wrongs, but also for with-holding  
particular rights: surely these Law-makers, and admini-  
strators of justice, that will not suffer injuries unpunish-  
ed, will be so farre from doing wrong, though it be but  
to poore and private men, that they will feare, though  
they cannot shie the suspicion of it, and be as carefull to  
observe a just and Geometrical proportion in the distri-  
bution of dues and duties. Now if private and common  
subjects are not onely secure from injuries, but also ac-

G cording

cording to due desert publicly regarded, and rewarded for their particular service to the Common-wealth, though their aime be but at their owne personall and private profit; one may safely conjecture, that the publick & politick parts and pillars, the distinct and settled societies of that State shall be as strongly secured from detriment by wrongs, and as freely and fully favoured by advancement in rights. Yea it may be fully presumed, where a State is so framed, that they are all united in one head, without dependance and subordination to each other. As in a Monarchie, where with an equall impartiall proportion the supreme head gives protection, & distributes rewards; when as if their union and communion be continued by a collateral relation, & mutualitie of members, their equality of power and desert, would breed emulation, if not envie and indignation, and make them ingratefull to each other, if they be not injurious. As it is where the government is Aristocraticall; which may be seene in the envious ostacismes of the Athenian, Ephesian, Venetian States: *Thucydides historicus in exilium pulsus erat, quae fortuna optimo cuique Optimatum Athenis accidere solet. (as Paulus Iovius saith of the Venetian Common-wealth,)* Neminem temere ex Optimatibus qui vult insigni virtute, vel fortis in gerendis rebus, ceteris antecellat, potentem & clarum fieri patiuntur. So that it is but a perverse & preivis paradox in Machiavell, to hold, that a Princely Monarch uses to be more ungratefull, than free and popular States, when as they either returne malice and mischief in reward of singular merites; or if suspicion which hee makes one ground of ingratitude, do not make them, at least to suspend them by a relegation; yet avarice, which is his other ground, will make them really ingratefull, though formally they pretend a reward. For if they gave any thing, it will not be worth the taking, as *pauci populari & libere civitatibus, pramia liberalitatis plus habent honoris quam*

ἡ δὲ πόλις  
ἡ δὲ πόλις  
ἡ δὲ πόλις. *Arist.*  
*lib. 2. c. 12.*

*Cic. de Orat. l. 2.*

*Iovius hist. l. 4.*  
*Machiavel. disc.*  
*cor. l. 1. c. 29.*



quam utilitatis; they bestow nothing but vaine, vanishing, empty, and aërie titles, which are blowne up, blowne out, and blowne away with the breath and voyce of the vulgar that gave them, so that they doe him that is gratified no right and regall good: *It is not gratifying to give things that are contemptible; for no man will confesse that he hath neede of them: yea these toyish titles doe men more hartie than their ingratitude could.* For titles without proportionable estates, do not only fall under the miserable succour of other mens pittie, but are also a temptation to provoke all men to contemne them. And one maine reason of this difference in rewarding is, that Aristocracies respect themselves in it, when as a Monarch to whom all give due and loyall respects, doth powerfully protect and royally reward with respect to all. But when and where Monarchies are distinguished into societies, as in some Kingdomes there are five States, as in *Denmarke*; in *France*, and in *Brittaine* three, which are subordinate and inferiour one to another, then and there the supreme Governour doth regard and respect them with different degrees of favour and care, with consideration of what consequence they are to him, and so proportions pensions; and of what need they stand of him, and so affords protection, searching into the severall circumstances of their employments and abilities, as of what use they are in point of necessitie, utilitie, and honour. Now all these three States are necessary, profitable, and for honour of the Prince, but not equally at any time, nor constantly at all times; neither in respect of peace or warre, domestick or forraigne: so that as one State doth make it selfe more necessary in relation to an extraordinary time of neede, so another may be more profitable in the continuall supplying of ordinary expenses: and the third may bee more for the honour of a King, both in ordinary and extraordi-

*Bodinns de re-  
pub. lib. 5. c. 4.*

*Arist. Rhet. lib.  
2. cap. 9.*

*The saurus pol.  
Apotelesma 9d.  
orancidurine  
apotelesma  
didit*

*revised from  
the first edition  
in 1710*

ary actions: Now a King that preferres his honour before his profit, at all times will more respect that State which stands strongest for his honour at all times, than that which is more profitable at all times; so will hee more esteeme that which certainly supplies his ordinary continuall charges, than that which may be more necessary, *scilicet calum rnat*, upon an extraordinary unlooked-for occasion: because wisdom is not employed in preventing, and providing against what may bee in possibility, but against what is likely in probabilitie: so that as in the naturall body, though there bee more continuall intercourse and mutation of needfull supplies reciprocally betwixt the head and the heart, especially from the heart: yet those externall members that are nearest united to the head, have more externall honour, as the eyes, the eares; so in the body politique, there is a constant interchange of succours and supplies betweene the State Civill and Ecclesiasticall; yet the State of the Nobility, especially taken for the Counsell, is of highest assistance, which are as it were the eyes and eares of the King in publique providence and intelligence, (as *Dion Chrysostomus*) Πέρσης ἑνὰ πῦρ ἐξ ὁδοῦ αὐτῶν βασιλέως ληθάνον. i.e. the Persians had one that was called the eye of the Emperour, (as *Appuleius* out of *Aristotle*, expressing the State of the Persian Court) *inter eos Aures Regis, & Imperatoris Oculi, quidam homines vocabantur.*

These Principall Peeres that are so closely united to the head, that they communicate with it in the most secret and serious advisings, deservedly enjoy the fairest fortunes and favours; for it is good reason that Kings should heape and bestow upon the watch-towers of the State the greatest and highest honours in the State: that as they are nearest, so they may be dearest, being his right trusty and welbeloved Counsellours. Especially seeing their employment is no more immediately eminent than

the

His Majesties  
instructions to  
the Bishops.  
1626.

πρὸς βασιλείας,  
Zetzer Histor.  
Gloss. 1.

the trust of it is troublesome and dangerous. *Imperium amore religionis semetipsum* Tacitus Histor.  
 And the next State in high estimation with Christian Potentates, and with many the most esteemed in all respects is their Clergie, the State Ecclesiasticall; upon which they have heaped favours to the very exhausting of their treasures. *exhaustisse, &c.* I am not able to reach the reason in point of State; of that extraordinary extravagant large liberalitie: but thus much I am able to compasse and conceive, and shall endeavour to make it plaine. That whatsoever right and reason any King in Europe hath had for this 400 yeares to uphold his Clergie, and conferre favours and honours upon it; our present supream head of our Civill State, hath all that right, and more reason to be as royally indulgent to our present State Ecclesiasticall.

S. 2. As none can deny: but as he that hath chiefly of power over the whole body of the Common-wealth, may rightly and justly favour, bestow rewards, priviledges and power upon any publique societie, or private person in the same: so none will affirme that all that have supream power have the same equalitie of right, to endow with priviledges, or enrich with rewards; because that all doe grant that all Kings have not Dominion in the same equall altitude and latitude, and so cannot so highly advance in priviledges, least they surmount their petty prerogative: nor so largely give them power and renewes, lest their extortion shorten their owne. And the grounds of this inequality are diverse; in handling of which I will neither follow *Machiavel*, nor *Junius Brutus*; because I finde them to runne into two extreames, the one granting it to all out of the loosenesse of a wanton wit; the other denying it to all, being carried by the stream of innumerable particular authorities; & that because, as the other wanted conscience, so he wanted experience: or rather because *Machiavel* lived when all the Princes in Italy claimed & usurped

usurped equall and full power, and so writ what they did, not what they should do; and *Brutus* might endeavour to diminish the power of all, because he would not have the *French King* have so much, which hee might thinke too much for the present: if he considered it with the times before *Lewis* the eleventh, wherein as the Peeres and Parliaments had too much, so the Kings had too little: so that their difference of Dominion is not according to that fullnesse Princes can make it when they are once in possession of a Kingdome; not according to that diminution wherewith disloyall Subjects impaire it, when they threaten & raise a rebellion; but it is according to the severall meanes whereby they attaine or obtaine their Kingdome. Now all supream Dominion in a Monarchie is attained by conquest or succession, or obtained by election. Kings that come to it by the right of conquest, may have as much power as they will take; they make their owne Charters, which might be some reason, as well as the *Roman* hatred of the name, as made *Scipio* refuse the title of a King, when the *Spaniards* would have given it him, lest he should be onely an Elective Prince; (as *Memnon*) *Συνίων ὁ βασιλεὺς τῶν Ἰσπανίων*, in *ιστῶν*: when as being a conquerer he could take what title he pleased, as in his Letters to the Senate of *Heraclea* he stiled himselfe, *Συνίων στρατηγὸς καὶ ἀνδραγαθὸς Ῥωμαίων, ἡγεμὼν τῶν ἐπὶ τῇ Ἰσπανίᾳ* : i. e. *Scipio* the Captaine and Consul of the *Romans*; which included a fullnesse of power both in relation to peace and warre: those that come to it by naturall succession, have as much power as their ancestours, accepting of such power as they finde; those that succeed by bequest, and are adopted heires (for adoption is good by last will and testament) have the same right that a naturall successor hath, if the adoption stand good. As the Kingdome of *France* was given to *Edward* the third by *Charles* the sixth: but those that are called to it onely by election, their power

*Memnon hist.  
de Statu Hera-  
cle. lib. 12.*

*Cujacius observ.  
lib. 7. cap. 7.*

*Hottoman. il-  
lustr. quæst. 1.*

power is restrained and curbed with cautionary conditions, and stands limited by them, though it may bee questioned who shall interpret them.

Now if these have great power in their supreme government, by any one of these rights to attaine a Kingdome; surely hee that hath it by all these rights conjoyned, hath more power than any hath that is intitled to it but by one, especially by election. But our present Sovereigne hath it by lineall succession from an absolute Conquerour, which was confirmed to his father of pious memorie, by the Nuncupative will of his sacred predecessor, who then adopted him, and all was made sure unto him by the elective assent of the supreme Nobilitie, without any crosse-course conditions, (as falls out) when the souldiers or people elect. And as it is plaine that hee holds by all these, so I do conceive I could make it appeare, that most Kings in Christendome hold primarily and principally by one of these, and that of least power; but that I am loath to touch the ticklish and tender titles of foraine Potentates; neither will I speake any thing of them as their States now stand, but onely in a word shew what anciently they were: for in my poore judgement their government may be as good and lawfull, if they have had the power and opportunitie to cast off and free themselves from these bridles and curbes of government: for not the most limited power, but the best rectified is safest both for Prince and people.

To shew then how it was with them heretofore, and to begin with the Empire after it was translated to the *Almaine*. Long hath that Empire continued by the election of the high Chamber of the *Septem-viri*, the seven selected Electors of *Germany*; and some of the best Emperors have so well liked it, that they have not onely beene willing to take the promissarie oath containing di-

*Brissoni de  
Regno Persico  
lib. 1.*

*Anno 1. Jacob.*

A just recognition of an undoubted succession.

*lib. 1. c. 1.*

*lib. 1. c. 1.*

Clapmarini de  
Arcana Reipub.  
lib. 5. cap. 20.  
Cominiani lib.  
10. Comment.  
Grandi di Fran-  
cia la Briglia in  
mano.  
Guicciardini  
hist. lib. 16.  
Jeremy 38. 5.

Hostomian, apo-  
logia Catholica.  
§. 6.

Guymerus Com-  
ment. in prag.  
sanct. tit. de au-  
thoritate Conci-  
liorum.

vers strict conditions, but have also granted them new free Charters; and large prerogatives: as *Charles* the 4<sup>th</sup> in his *Bulla Aurea*, and so held so loose and light a hand over them, that one of the Electors, the Bishop of *Mentz*, in the Councell at *Franckford*, said, the government was Aristocraticall, which might be well taken if hee meant it with reference to the Councell. The Kingdome of *France* seemes not to have beene anciently so absolute and unrestrained as now it is, for the twelve Peeres of *France*; *qui sunt ut in Germania principes electores*, had not onely royall priviledges, and did not owe simple subjection, but respective homage; and had a regall authoritie in their severall Provinces, and the command of the chiefe forces: but also had the power, if not to elect their King, (as *Naclerus* saith, and it seemes true because they have deposed them;) yet to determine, when there is no great doubt who shall succeed: and their setting alwaies upon an heire male (which is the course of elective State) shewes it to be somewhat elective; for the restraining of it to the heire male did not primarily proceed from the *Salique* Law, because many of their Kings have been *Lorraine*; which Dukes, (the *French* Civilians say) doe not observe, nor are under the *Salique* Law: but if it be not elective, it seemes not to be so cleare a succession, because it is a masculine feud entailed upon the heire male. Yea the predominant extravagant power of the *Parisian* Parliament seemes to intimate, that the ancient State was not so free and absolute a Monarchie; for they called in the Kings edicts, sent forth the contrary: and no appeale lay from their sentence. *Contra illud tantum supplicare licet*, a petition of right only was permitted. So that this State which is most absolute of all others, seemes to have beene anciently not so free & uncontrollable in its government, as a free successive Monarchie ought to be. The next is the Kingdome of *Spain*, which hath of old bin so disquieted



ted with the continuall incursions and inuasions of the  
*Moors* and *Saracens* from the South, and *Goths* from  
 the North, that it had scarce time to settle, as water to-  
 sed by contrarie windes. But when it did pitch upon the  
 forme of a Monarchie, it was elective, as appeares out of  
 the Councell of *Tolledo*: *Siquis ad Regia Majestatis per-*  
*venire fastigia ambis, absque electione nobilitari, Anathema*  
*sit*: yea and in their latter daies their forme of inaugura-  
 tion, doth import and imply the same: for thus it runnes,  
*Nos qui valemos, tanto comme vos, y podemos mas que vos,*  
*vos elegamos Rey, con estas y estas condiciones, entre vos y nos:*  
 i. e. Wee that can do as much as you, and more, do elect  
 you King, with these and these conditions, betwixt you &  
 us. Yea and the *Justice* of *Aragon* hath had as much power  
 as ever the Parliament of *Paris*; as is plaine, not onely in  
 unlimited immunities, but also in the power they used  
 against the Kings edicts: as may be seene in their writs,  
 called, *los manifestados*, y *jure firmos*; from which power,  
 though the Inquisition began to free the Kings, when the  
*Castilians* moved the new King *Ferdinand* to antiquate  
 their authoritie, and fully finished it when *Philip* the se-  
 cond repealed the *Aragon* priviledges, that hee might  
 frustrate the project of his distasted Secretary *Antonio*  
*Perez* who appealed from the King, at *Juzicio del justicia*  
*de Aragon*: yet I do not conceive how that State should  
 be more free than before, because it is under the power  
 of a tyrannicall Inquisition: for though that King for pre-  
 sent reason of State gave them power too much to conti-  
 nue when those reasons ceased, yet they have much im-  
 proved it, so that the Kings of *Spain* might have done  
 more providently in preventing their prevailing great-  
 nesse, if wee consider their domestique freedom in go-  
 vernment; though their advancement may advantage  
 them to bring forraigne States under their servitude: being  
 a Councell of Conscience that reflects upon the treatie  
 concluded

*Concil. Tolet.  
 s. cap. 3.*

*Hieronymus de  
 Blanca de Hist.  
 regimine.*

*Idem ibidem.  
 Thuan. hist. lib.  
 104.*

*Memorial. de  
 Ant. Perez. la  
 tercera parte.*

concluded by the State with power to approve or annull them, and with dormant dispensations, which have reference to contingencies in *ordine ad Spiritualia*, to continue or dissolve all; & the Retraict is formed like waxe to take the impression of the present aspect and necessitie of affaires. But it was hard, (seeing that was their maine aime in pulling the *Iustices* downe) to hinder them from at least so much power as they were able to take from the other: so that *Tullie* had no great reason to aske *Atticus*, in the like case; & that in Greeke as a secret, not to be understood of any that should intercept his letters.)

whether is it not a good caveat to beware, lest he that ruines a Tyrant, do not raise himself on his ruines & in his roome; few doubt it, and this may be most unquestionable with *Spaine*, witness *Naples* & *Millaine*. These Inquisitors are like *Ephori* in the *Sparrane* Republique, whose Kings are observed to have the most restrained power: for the chiefe of these Inquisitors hath a great power over the King in his owne Court. *Inquisitor generatis, qui Aulam Regiam sequitur, cum adjunctis consiliariis Ecclesiastici ordinis potestatem contra ipsum Regem usurpare potest*: so that by all this it is plaine, that the *Spanish* Monarchie hath not long beene so free a Monarchie at home as a succeeding State uses to be. But that which makes most, to prove these States not absolute, is because an appeale will lye from any of them to the *Optimates* & Orders of their kingdomes, for *extrema provocatio* is one principle *inter summa jura imperii*. In imperio tamen Germanico, (ut testantur *pragmatici*) ad sacram & supremam *Cameram* provocatur, apud Gallos ad octo *Curias majores*, apud Hispanos ad quatuor *Curias*; even as a generall Councell is above the Pope being elective. As for the other States of *European* Monarchies, without all question they are at this present elective; as *Poland* which made their King *Micislans* send *Lampartus* Bishop of *Craco-*

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via to Pope *Benedict* the seventh, *ut Regem se Polonorum* *Herbert. histor.*  
 & posteros suos esse juberet, sed ea res propter iustas causas, *Polonia lib. 1.*  
 ad aliquod tempus dilata fuit: yea, it was never obtained;  
 but it still continues elective. *Moderata est principis Po-* *Thuanus hist.*  
*lonia potestas, quia non natura legibus in patrum regnum* *lib. 56.*  
*succedit, sed communibus suffragiis senatorij & equestris*  
*ordinis & publicâ exclamations nobilitatis eligitur.* *Hunga-*  
*ry* also is elective, although the *Spaniard* hath intayled it  
 upon the match with the *Infanta*, which may easily bee  
 cut off, and suffer a recovery into the former freedome. *In*  
*Hungaria liberam habent electionem, & inde ab ejus morte* *Comenius lib.*  
*proceri Bude conveniunt:* I might shew the like of *Den-* *10. Comens.*  
*marke*, but no more of that, I know not how this may be  
 taken: but I hope well, because in this I deliver onely  
 what is licenced intelligence, even as *Honorius* and *Theo-*  
*dorus* did interdict, *ne alienjui regni arcana scrutarentur;*  
 but it was with this Proviso: *Legatus tamen reversus om-*  
*nia narrare debet.*

S. 4. These instances are sufficient to prove that our  
 present Prince hath most irresistible power, and so most  
 unrestrained right to favour, and freely bestow immuni-  
 ties, priviledges, and revenues upon any single society, or  
 single persons within his Dominions. Now the next  
 thing to be proved is, that as he hath more right to shew  
 favour to what State hee will; so hee hath more reason  
 than they all to favour his Clergie most. But before I  
 passe to that, it is worth observation by the way; that  
 this government of our King is not more free in it selfe  
 than it is freely and willingly sustained; which shewes  
 that it is the ancient, equall, and, as it were, the most natu-  
 rall government of this Island, and therefore the power is  
 most right; because naturalized by custome; when as in  
 other Kingdomes, yea in many pettie particular States,  
 that little power they have improved by force, they keep  
 and exercise by the same meanes. Hence it is that they



dare onely trust forrainers to bee their guards: as the  
*French* have the *Spots*, and *Suizers*; the *Dukes of Florence*  
 the *Low-Dutch*; which choice doth either proceed  
 from tyranny in the Kings, or perfidiousnesse in the Na-  
 tion, *ὁ δὲ βασιλεὺς τυραννίδι, αἰτῶν τὴν φυλακὴν*: i. e. hee that  
 affects tyrannje, desireth a guard; as for instance, the first  
 Dukes of *Florence* were esteemed no lesse, for it was li-  
 bell-wise written over the doore of *Cosmus de Medicis*  
 (the first Duke) where he was sicke, and tooke physicke,  
*qui medicus vivit, miser vivit*, which they understood of  
 the *Medicean* tyrannie, both in respect of his feares, and  
 their wrongs in his oppression: so the later *Greeke* Ori-  
 entall Emperours had a guard of *English*, which was cal-  
 led *φυλακὴ πλεμπόρων ὀγγλίων*, in which those tyrants put as  
 great confidence, as the *Turke* doth in his Christian-  
 borne Janizaries. And in this age there were some that  
 would have brought an *Italian* guard into *France* and  
*Scotland*, but it was when they aspired to usurpe them  
 both: *Guisani Italorum custodias, quod assuetis nequitijs su-  
 is non satis fiderent, adhibent; sui potius quam regni, aut  
 regis munimento*: when as our Kings have found out by  
 long experience that to be true, which *Dyon Chrysostome*  
 told *Trajan* the Emperour, *τὸ μὴ εἶναι ἀλλὰ φυλακὴ πλὴν ἀγα-  
 τῶν*, so that they regard no guard, but the love of the  
 Subject. But to returne: It is no small encouragement  
 to me, before I argue it in any point, and a strong argu-  
 ment for me, that our Sovereigne hath and doth prove  
 this which I affirme to bee true, in his most Royall and  
 religious practice. For I doe not beleee, that there hath  
 beene any Emperour, Monarch, or Potentate since *Charles*  
 the first and the great, that ever did so truly and constantly  
 favour, and carefully protect a poore Clergie as hee  
 hath done. But let us consider what great reason of this  
 favour there is: wherein I will not search vainly into his  
 Majesties particular reasons, for I should not bee able to  
 finde

finde them out, because a Kings heart is not to bee founded and searched by a private head, that is not able to conceive the heighth of their ends: but I will discourse of it as he is our King. If from a single relation, there doe arise a single respect, surely a double portion of respect will follow a double relation. Now this Aristocraticall Clergie have not onely relation to their Prince, as hee is a crowned King, and they his lawfull Subjects, but also as hee is the Lords annoynted, defender of the faith, according to his just title. (as his Majestie pleases to speake in his declaration before the Articles.) For they also are the Lords annoynted, delivering that faith; and the *Primate* of them, the immediate instrument of his consecration; so that as by the crowning, they are by right his Subjects, so this annoynting of God, seperinduceth a brotherhood betwixt Kings and Bishops (as Sir *Francis Bacon* in his Booke to King *James*.) And this relation is onely ancient in our Kings amongst the Princes of Christendome; for though, as our Sovereigne is crowned by the Archbishop of *Canterbury*, so the Emperours when they were Kings of *France*, began to bee annoynted and crowned by the Archbishops of *Mentz*, *Colen*, and *Trier*, as they were Emperours; and by the Archbishop of *Rhemes*, as they were Kings of *France*. Yet the Kings of *France* of the first line, at least, were not annoynted (as one of the freest Historians confesses) *De la premiere Ligne oint ny sacre à Rhemes*: and so in another place the same Author is plaine and peremptory, *n'est faite aucune mention de sacre, ny de onctionsz Roys, de la premiere ligne. Id. ibid. i. c.* there is no mention in our Antiquities, of the annoynting of the Kings of the first line. And though the Kings of *Spain* are crowned by the Archbishop of *Tolleda*, the Kings of *Denmarke* by the Archbishop of *Upsale*, the Kings of *Polonia* by the Archbishop of *Gnesne*, the Kings of *Hungary* by the Archbishop of

*Girard du Hail-  
lan des affaires  
lib. 1.*

*Vid. leges sancti  
Edwardi.*

33. *Edw. 3. tit.  
Aide le Roy.  
Guineus tit.  
12. §. 9.*

*Clement. unic.  
d. fur. §. porro  
ver. Reges.*

*Strigon*, the Kings of *Navarre* by the Bishop of *Pampe-  
lune*, yet none of them were anciently annointed. Now  
it cannot bee denied, but as this reall relation doth more  
peculiar and appropriate the State Ecclesiastique to our  
King, so it makes him not onely the supream head and  
governour, but also the chiefe guide and guardian: for by  
it he is more than a meere Lay-man; he is a mixt person,  
having supream Ecclesiastique as well as Civill govern-  
ment, *Reges sancto oleo uncti sunt spiritualis jurisdictionis  
capaces.* Which sentence was applyed to our King in the  
time of *Edward* the third: And *Guymer* in his Comment  
on the pragmaticall sanction of *France*, is peremptorie,  
*quod Reges inuncti non sunt meri Laici*; and addes, *inde Ro-  
ges Anglia conferunt beneficia.* So that by this is there  
some addition granted to the power of Princes over the  
Church. Though the old glosse upon the *Clementines* a-  
vouch, *quod unctio nil addit ad potestatem Imperatoris*:  
which the *Gregorian* edition of the Canon Law did well  
to dislike, but they should have done better, not to have  
given a worse. And if it adde to their power over the  
Church, then as they have more right by it, so they have  
more reason for it to doe what good they please for the  
Clergie. So that, doe but consider the qualitie and quali-  
fications of our Kings person, to doe for his Clergie, and  
you will say, hee hath greatest right and reason of any  
Prince. Consider againe the reasons on the part of the  
present State Ecclesiasticall, and you shall finde, that they  
deserve more of their Prince, than any Clergie these foure  
hundred yeates.

§. 5. But I must presuppose before that will be gran-  
ted, that our *Monarch* of great *Brittaine* hath not any  
reason to give or bestow meanes and revenues upon any  
forraine State Ecclesiasticall. No Prince hath reason to  
bestow his free favours upon any, over whom he hath  
(for the present) no right to rule, nor hath heretofore  
promi-



promised it, neither by himselfe or by his predecessours, and therefore bound himselfe to further & favour them. So that, though the *Roman* Clergie doth claime and clamour for revenues and priviledges from our King, yet as they have no right to claime them, so they have no reason to expect them: for they are so farre from being his deserving domestique subjects, that they are his deadly enemies, though they be imbred and homebred. They have not then any right; for neither our King, nor any of his lawfull predecessours, did ever binde themselves to any such performances. Later & better learned writers of the *Romish* faction, finding by the carefull and curious examination of sundrie passages in infinite Interpreters, how hard a thing it was, to prove their universall supremacie in *temporalibus*, by direct evidence out of Gods word, resolve to prove it by Charter, grant, and priviledge from Princes pieties, as *Augustinus Stencus* (*Librarian* to Pope *Paul* the third) sets downe the claime the Pope laid to all the Kingdomes in Christendome, grounding all upon the particular grants from the Kings, but especially on *Boniface*, the eights letters of Demand. As for instance, from *Constantine* the first and the best, and *Phocas* the first and the worst, from the universall gifts of those universall Emperours, they ground a generall right in all kingdomes. The *Bononian* Canonists deale cunningly, and seeme to deale ingenuously, playing the sophisters more than the sycophants, in this point, discoursing of this donation of *Constantine*; for they lay it downe as a presupposed presumption in the Law: That there is such a true deed, notwithstanding there be no mention made of it in any part of the sincere Civill Law. *Sed qua notabiliter sunt specialiter notanda sunt.* But they never question it *de facto*, but enquire *quo jure*, and, *an sit revocabile*; and since they do not fully affirme that hee gave it, I will not so much as shew the falsitie of it, but referre all to the most

most judicious and modestly moderate amongst them; See what *Bartholus* saith of it, who was not a plaine dealer especially in publique, and take his opinion as a taste of the rest, being a moderate man: *Videte* (saith he) *nos sumus in terris Ecclesie viz. Bononiæ, & ideo dico quod illa Donatio Valuit*: hee would not say it was firme, because he knew there was not an authentique instrument of it, assenting to that of the supposed *Doner Constantine*. *Scriptura diversa sibi invicem derogantes, nil firmitatis habere possunt*. But for *Phocas* his grant, a faithlesse usurping Tyrant, I leave it to be judged of, by those that chuse to measure claimes & titles, by the line of equitie, and not by the Last of ambition. Yet thus much I will inferre against it, that a Charter granted as this was, chiefly upon a ground of cunning, with a purpose to maintaine a plot, by partie, which was undertaken and begunne by fraud, might have beene after revoked by himselfe, or annulled or repealed by his successours. And further I say, that though this grant were authentique in all points, yet the Popes could have no right to this Kingdome by it, because this Kingdome was excluded from the care, protection and providence of the Romane Empire, neere two hundred yeares before *Phocas*. For *Ælius L.* Lieutenant for *Valentinianus* in the parts of *France*, sent word to the *Brittaines*, that they were to looke for no more ayde from the Empire, which was false into faction, scarce able to support it selfe; being thus abandoned, all Lawes did free them from dutie and dependance. But to make these generall grants the stronger, they pretend particular grants from our owne Kings, as from *Ina* King of the West Saxons, that was indeed religious, and from King *Iohn*, that was impious, as well *sans feyde*, as his title was *sans terre* (as the King of *France*, *Philip* the second (said) *Johannes nunquam fuit verus Rex*; neither of these binde our State; for the *Peter-pence* contributed to *Rome* by *Ina*,

*Barthol. prefat. Digest. nu. 24.*

*L. Scriptura. 14. C. ad fide instrum.*

*Corvart. pract. quest. c. 1. nu. 9.*

*Decius Consil. 130.*

*Polychron. li. 1. cap. 110.*

*Baronius Annal. 450.*

*Math. West. 1216.*

*Inda*, are called in the Lawes of *Canum*, *Larga Regis benignitas*: and in the abstract ( which is the best of the confessours and conquerours decrees ) *Regis Eleemosyna*, which imports not due nor dutie, but charitie, and the Pope to be his beads-man, not the King to be his hower-mager. There were many manifest nullities in King *John* grant, for hee had no right to hold the Kingdome, and if hee had held it by right, yet he could not grant any thing in prejudice to the whole State, without the consent *Regni universitatis*, ( as *Mathew Paris* tearmeth the Parliament ) and a third nullitie is in the forme of the grant, where, whatsoever is passed in the body of the Grant, is resumed by this proviso in the conclusion, *Salvis nobis & heredibus nostris, Justitiis libertatibus & regalibus nostris*: which being luckily inserted saves all, and makes it absolutely void. But the maine Grant which *Baronius* relies upon, is a donation from *Ethelulphus* King of the West Saxons which seemes very lawfull, if it were (as he saith) *salubri consilio Episcoporum & Principum*, but yet that deed ( though wee free it from being forged, and grant that by it a pettie King could passe all *England* to the Pope ) was void, if you do but consider among many other things, the incomperencie and incapacie of the person, to whom the deed was made. Now *Baronius* is peremptory, that it was made to the immediate successour of *Leo* the fourth, which according to all the truest writers of the Popes lives, was *John* the eight, which they conclude was a woman, *fu una donna nata de Inghilterra che vacata la sede Apostolica, per la morte di Leon quarto, fu eletta per sommo Pontifice di Roma. i.e.* There was a woman by Nation of *England*, who (when the See Apostolique was vacant by the death of *Leo* the fourth) was elected to be Pope of *Rome* ( as *Petro de Mexia* ) and *Boccacio de luis* *mugeres illustres*: the King might perhaps have done much for his country-woman, if he had conceived her so (as this

*Math. West.*  
*ibidem.*

*Baron. Annal.*  
*Anno. 854.*

*Petro de Mexia*  
*della selva. c. 9.*

*ibidem.*

*ibidem.*

*ibidem.*

*ibidem.*

*ibidem.*

Spanish author conceits, mistaking her name for her Country) but she was not capable to receive such a deed to her use, and therefore, the *Jurists* have reason to make this question, *Virum acta Johannis octavi in papatu rata esse debent*: And if what she did was void, what done for her is not firme, being it was given, supposing shee was capable. So it is plaine, that this engine is not able to uphold this claime, being so loose, and hanging together in the joynts like sicke mens dreames, shewing their inconsiderate inconstant humours, their proofes being as weake as their imagination is strong, and standing upon slender supposals, particular interest making partiall. But they have another ground for a presumption of their right, because some poore oppressed Princes have desired to hold their Kingdomes from them, as some usurpers sought to obtaine dominions by their gifts; who depose Kings, that they might dispose of their Kingdomes. But this is nothing, and they stand not upon it, but when they have nothing else to say. I do not by this goe about to deny, that our Kings have been bountifull Benefactors to the *Roman* Clergie, but this onely I stand upon, that they have no reason to continue so still, since they were never lawfully bound to it. Neither do I denie that any Prince should conferre favours upon some forraine Ecclesiasticall State with this caution, that he be not prejudiced by the kindnes, & may have good use of their thankfulnesse: as suppose any Prince should be called into *Germany* or *Italy*, or any other kingdom, by an oppressed State Ecclesiasticall, that Prince may do royally to invest them into their former spirituall possessions, and yet never impoverish or inflave his owne kingdome to them, and also binde them to his for protection. Thus did *Pipine*, *Charles* the great, *Lodovick* the pious, they releevd the *Roman* Clergie, and bestowed very much upon them in large territories, but they gave them

*Dies nunquam  
transit, quin  
aliquid piū  
fecerit, sed ut  
ut Avarum  
non everteret:  
(ut de Severo  
Lampid.  
Instrument. d  
Volaterrano c.  
dia: lib. Greg. 3.*

them nothing in *France*, but onely what they recovered from them in *Italy*. *Pipinus & Carolus Rom. Pontificibus profugium, res Pontificum, prona in lapsum, ne ruerent sapius texerunt, aut majore studio crexerunt affector.* It is then evident, that our King hath no reason to bestow honour or power, revenues or priviledges, upon any foraine State Ecclesiasticall; and I shall endeavour to make it as plaine, that he hath the greatest reason of any Prince in Christendome to bestow them all upon his owne domestick Clergie.

§ 6. The Nobility and the Clergie are the prime pillars of a Monarchie, and the Communaltrie is the ground whereon they stand. And this they well know that intend the ruine of it, for they will be sure to strike at these two props, knowing that then it will fall, and the ground and foundation remaine to them to erect a new; (as *Ball* a Masse-Priest, Chaplain to *Was Tylor*, adviseth his chieftane to destroy all the Clergie and Nobility; so *Garner* did the Traytors in the Powder-plot, (as the Earle of *Northampton* well observeth:) and therefore *Philip* the second of *Spaine*, who was seldome in an errour about the uphold- ing and enlarging a Monarchie, advises his sonne *Philip* the third, to stick fast to the Clergie, *los Clerigos amigos*, as I have beene; but yet so, as you disregard not the Nobility, otherwise they will hate you, and envy them, and ruine all. Now if the Kings of *Spaine* have reason so highly to favour their Clergie, as to feare, least their kindnesse to them, should kindle indignation in the Nobility; surely our Prince hath more reason so highly to succour his Clergie, as that it may not be the object of the contempt of the vulgar. For the Clergie of *Spaine* and all the *Romish* faction are not simply subject to them, but deny Civi- ll obedience alwayes to their Prince, where Canonick obedience commands the contrary, or priviledges above it; when as our Clergie, are true Subjects as any State,

*Guic. lib. 4.  
hist. Ital.  
Sabellic. ex emp.  
lib. 3. cap. 9.*

Nicolaus Oli-  
veira de redi-  
tu Ecclesiastico  
Hispania.

Offatm epist.  
274.

Guice. hist. l. 12.

Concordata Gal-  
lia tit. de An-  
malu.

and renounce all obedience to any other Potentate. So that this hearty adherence to his Majestie, is one reason. Yea they bestow all their labours in Gods service, onely in his dominions; expect favour from none but his highnesse: and they are more beneficiall to their King than any Clergie in Christendome to their native Prince, or any State in this Kingdome to the Crowne. For though the reve- nues of other Clergies, as of Spaine, bee infinitely above ours, as one of their Historians: *Opes Ecclesiasticorum panè aequales sunt secularium unà cum Regijs*. Yet they are not so constantly beneficiall to the King, but to the Pope: and if the King get any good sum or subsidie out of them, it is either *la cruzada*, or the tenths called *el excusado*, granted to him by the Popes indulgence; or if hee cannot procure a Bull of facultie, hee must get all they give by striving and force (as Cardinall de Offat in his letter to Henry the fourth of France speaks of Philip the thirds sacriledge.) *Rex Hispania omnem argenteam supellectilem Ecclesiarum & Ecclesiasticorum sacrilegà manu usurpare tentat*: when as our Clergie, which have not the tyth of the tenth part of that meanes, is not onely now and then profitable in small matters, but constantly beneficiall to the utmost of their small uncertaine revenues. Now if Francis the first beleevd that for a great kindnesse from Pope Leo the tenth, in their conference at the interview, to have the tenths of Ecclesiasticall livings in France for one year; (as Guicciardine in a judicious sleighting of the favour: *Promisse il Pontifice, al redargli facultà, di riscuotere, per vn anno la decima delle cheise, del Reame, de Francia*) that is, the Pope promised to grant him a Bull of facultie to levie the tenth, of the Church of France for one year: that the King tooke the proposall into consideration, and communicated it to his Counsell; who thought it a great benefit if he might have them, *non secundum antiquum valorem beneficiorum*, but as they are improved;



improved; Surely a farre greater benefit it is to have the tenth every yeare, Subsidies most yeares, and first fruits the first yeare, and that not according to the present value which is much fallen from the ancient revenues, but according to the Popes bookes, in most, when as Ecclesiasticall preferments are abated halfe in halfe. For as all other States are more charged, so their revenues are improved accordingly; but the meanes of the Clergie is much impaired, and yet their charges are increased in many things; in all things keepe the old rate; so that notwithstanding the poverry (as Sir *Nicholas Bacon*, wee have no reason to exact or expect any subsidie from the spiritualtie, who are so exhausted) yet it is constantly the most beneficiall State of this Realme to the Crowne, both in ordinary and extraordinary revenues, *ceteris paribus*. In these considerations amongst many, wee see they deserve much, and there is one thing that makes it more safe for our King to bestow greater honour and priviledges upon them, than any other Prince; which is, because hee hath not the reason to suspect them of ambitious aspiring to a Monarchie, since they have cast off their Church Monarchie; as the *Romans* never suspected any of a tyrannicall usurpation, after they had by one consent cast out the Kings: so that though the Pope seemed to favour this Clergie heretofore upon good reason, yet our King hath as much, and this reason more than the Pope hath, for he hath not onely all the power of jurisdiction the Pope had over them, but the revenues also the Pope had from them: and yet is without feare and danger of being rebelled against by them, or dethroned. But in one thing it is more capable of a royall Potentates bounty and protection, then any foraine Clergie is, in respect of its owne supream head, or any State in our owne Kingdome, in relation to our King; and that is, that it is so poore and obvious to injuries, that it

1. Eliz. 1.  
Gwymer comment. in prag.  
sanct. Gallia.  
tit. de Author.  
Gener. Concil.  
verb. de jectum.

Che l' honer  
gran cosa ha-  
verlo, più gran  
cosa è il meri-  
tarlo.  
Vs Anton. de  
Guevara Caro-  
lo quint. ep. 1. 2.

1. Eliz. 1.  
Gwymer com-  
ment. in prag.  
sanct. Gallia.  
tit. de Author.  
Gener. Concil.  
verb. de jectum.

will make the ordinary bounty of a Prince seeme magnificent, and cause his power to long and delight to protect such an innocent State, being neither able to resist, nor strong to endure and suffer wrongs; and such sheltering securitie is the proper worke of absolute justice, whereby it exercises expresses and approves its

*The. Aquinas  
Commentar. in  
Boethium lib. 1.*

*transcendencie, nam ut iustus sit non sufficit.*

*quod innocens sit; sed ut innocens etiam ab iniuria servetur.* Thus from

the power of Dominion,  
passeth the influence  
of protection.

**THE**

# THE THIRD CONCLVSION.

*That all the rights and respects that the State Ecclesiasticall enjoys or desires are originally derived from their relation and dependance on the Civill.*

**H**E that hath publique power and opportunitie to doe a great good-turne for endearing a private friend that depends upon him, will have much ado to forbear to do it, though the weale-publique suffer some detriment by it. Yet if his friend do so much tender the publique good, that he will not desire any thing to the prejudice of it, surely then the publique person out of his engagements and respects to the publique good, will leave off his present purpose and pleasure his favorite in some things that may doe him good, and the Common-wealth no harme. Even so our supreme Regent of great *Brittaine*, hath great and transcendent power, and never wants an opportunitie to doe good and bestow favours upon the well deserving State of the Clergie; and it were impossible for him to hold his royall bountifull hand, if this Clergie should not in all its petitions

petitions consider the publique good, apprehending it selfe as a member of the Civill State. And hence it is, that though the King have more power than I beleewe was ever tried or can be defined, to doe his Clergie good, yet they have not any thing conferred upon them which is not according to the Lawes, Customes, and Liberties of this Common-wealth. All that the State Ecclesiasticall enjoyes, belongs to it as to a principall member of the body politique; and is derived to it from the supreme Civill head on which it doth depend, and in whom it is united to the Civill State. It is no debasing or derogation to a spiritualitie, to be thus subject to the Dominion of a sacred Sovereigne; for though servitude, according to the Civilians, proceed not from the Law of nature, but of Nations, or at least from nature corrupted, (as the Schooles) yet orderly subjection and superioritie, proceed from the instinct of pure nature: for in Heaven there is order amongst the blessed Angels, and in the state of innocencie there was superioritie, not only betwixt man and all other creatures, but also betwixt man and woman; and had they lived in Paradise till there had beene father and son, there should have beene *Patria potestas*, or else the fifth Commandment is not morall: and when there had beene many families, there must necessarily have beene *Regia potestas*, or else the best and most happie life must have beene without the greatest happinesse of life, which is order. No disparagement I say, especially seeing the superioritie of our Prince over his Clergie is not enslaving tyrannie, but a sweete and a lawfull Sovereigntie; which government as it is his due, so it is our dutie to obey it; for government and obedience are relatives of equall extent. And as it is no disparagement to the State Ecclesiasticall to be subject to our supreme Magistrate, so it is great benefit to the Clergie, and a satisfaction to the Laitie; that all the rights and respects that they enjoy

*Non dominati-*  
*onem & servos,*  
*sed Rectorem*  
*& civis cogites.*  
*Tacit. Annal.*  
4. 12.

enjoy or desire, are derived from that Prince whom both so willingly obey.

§. 2 All that the State Ecclesiasticall doth enjoy or claime, may be reduced to these two heads; of power, and of honour: and they derive these from one sole supreme governour, who is fully qualified by his personall eminent authoritie, to transferre and conferre these rights and respects to them, and upon them: for as these two the power and honour of the Clergie are inseparably derived from the supreme Sovereigne, then in being, and not communicable to any other State: so the particular powers and regalities by which they are more specially conveyed, are inseparably and incommunicably appropriated to his royall person. As for instance, the power of the State of the Clergie is originally derived from his Ecclesiasticall supremacie, the honours from his Lawes and royall prerogative. All Kings I confesse have not Ecclesiasticall government, and that because many give up their right; some know it not, as many of our Kings for many yeares were bereaved of it, in whole or in some principall parts, by giving and granting to the Pope an inch in breadth with them, and hee taking an ell in height above them. But when the first defender of the faith Henry the eight waxed wearie of the weight of that intolerable usurpation, especially when hee perceived that the Popes ambition soared upon the wings and winde of the spirituall supremacie, to a temporall superioritie; Then the King, like *Julius Caesar*, that he might fully recover into his power the temporalitie, *potestatem Pontificiam, cum Caesaris potentia conjunxit*: hee resumed the Ecclesiasticall power, finding that it was impossible in the course of the moderne policie of the Popes, to be supreme agent in temporall affaires, while they were the highest in spirituall government; especially since these powers cannot rest really divided in a Monarchie, though they be really

K

distinct

*Jacob. Cujaci: in  
d. l. 2. d. origine  
Civilis. §. 9.*

distinct in a Monarch being a mixt person. So that the statutes in the *viceſimo quinto* of *Henry* the eight, and *primo* of *Elizabeth*, which determinately ſet downe this power of ſupremacie, are not Lawes inductory of a new, but declaratorie of the ancient authoritie of our Prince, vvith the ſolemne ſignification of their re-aſſumption. And our ſacred Sovereigne doth not alone take this power for his right, but many other Potentates in Chriſtendome, that have not ſo much reaſon. As the Kings of *France*, *Spainne*, *Denmarke*, *Poland*, *Hungarie*, and *Sicily*: which three laſt States have more nearer dependance upon the Pope than any in *Europe*; for *Sicilie* hath beene held of him as a ſpirituall feud, and *Poland* and *Hungarie* were both in one Popes daies, *Benedict* the ſeventh, converted from *Paganisme*; and therefore one would thinke, & ſo it ſeems, wholly at the Popes diſpoſall, eſpecially in ſpirituall affaires. Yet in *Sicilie* the Kings of *Spainne* do not onely claime ſupremacie of over-ſeeing, but alſo ſuperintendencie in doing, in Eccleſiaſticall employments. And the Kings of *Poland*, whole power is moderated by the limits and conditions of an election, *Archiepiſcopos*, *Episcopos*, *cœnobiarchas* dicunt ſuòque arbitrio eligunt: and the K. of *Hungarie* doe uſe the ſame power, and with as much reaſon (in a Canonists opinion) as we do, for though they cannot *de jure*, yet, *Reges Angliæ & Hungariæ conferunt beneficia ex privilegio Pape*. The Kings of *France* have alwaies beene at defiance with the Popes for this power, renewing continually *pragmaticall ſanctions* in defence of it, eſpecially in the time of *Charles* the ſeventh, therefore called *Carolina ſanctio*: which was of that force by vertue of that approbation of the free Councell of *Biſle*, that it curbed and caſttered the Popes power, cauſing them to impeach it by appealing from it almoſt in all cauſes; which *Pius* the ſecond perceiving, ſollicited *Lewis* the eleventh the ſonne of *Charles*, to abolish and repeale that

*Theſaurus Pol.*  
*Apoteleſ.* 50.  
*Guicciardino*  
*hiſt.* 1.4.

*Herbert. hiſtor.*  
*Polonia* 1.2. c.7.

*Baron. Anna.*  
*Anno* 1209.

*Thuanus hiſt.*  
1. 56.

*Gwymer. Com-*  
*ment. prag. ſan.*  
*tit. de Annati.*

*Duguesneus pro*  
*libertate Ecceſe.*  
*Galliſcana.* 5.4.

*Æneas Sylvius*  
*epiſt.* 387.



that sanction, being enacted in a seditious schismaticall conventicle, which he well approved for a generall Council while he was a private *Aeneas Sylvius*, Secretarie to the Emperour *Fredericke* the third, Clarke of the Ceremonies, and Apostolique Notarie in that Councell. The King for the present called it in, but his wisdomé found the mischiefé, and rewarded Cardinall *Balve* very well for urging him to it as the Popes Legat, *Rex Cardinalem Balvum in carcerem detruxit ob detrimentum consilio suo emergens*; and with such displeasure, that *Philip de Comynes* saith, *Cardinalis Balvensis carcerem horrendum exco-gitavit in quem inclusus primò merat & quatuordecem annos detentus, non obstante Pontifice Romano*. The Kings of France were ever after stout in the defence of that *Sancti*on, till *Francis* the first in his interview with *Leo* the tenth, did remit the force of it in the *Concordata Gallie*; which made his serious Secretarie *Budanus* say, *Palladium Gallie proditum esse*. The Kings of Spaine in Castile have some limited spirituall power, by a late priviledge of *Adrian* the sixth, granted to *Charles* the fifth; but when they see their time, they take so much as shall serve their turne: as *Philip* the second seized upon the temporalls of the Archbishop of *Toledo*, the Grand Chancellour of *Castile* ex officio. When the Bishop of *Caranza* was apprehended at *Rome* for new heresie, and when *Sixtus Quintus* sent to him to undertake a warre against *England*, and told him that he would remit to him all the revenues that arose of that Bishopricke, *sede vacante; sed prudentissimus princeps respondit se nil de suo Pontifici largiri*. And though at home this power is but what he pleases to take, yet in other of his territories it is lawfully as large as another Prince; as in *Burgundy* and *Belgia* he hath the same right the King of France once had: as *Charles* the fifth made a statute of *Morrmayne*. *Nullis personis Ecclesiasticis, vel locis sacris licet ullam rem immobilem, absque principis li-*

*Concordat. Gal-  
lia Leonina  
Constit.*

*Aeneas Sylvius  
Bulla Retrahit.*

*Protestatio Ro-  
gii advers. Con-  
cil. Trident.*

*apud Thuan.  
hist. lib. 8.*

*Philip. de Com-  
lib. 9.*

*Concilio Pisano.  
Guicciardine  
hist. lib. 12.*

*Budanus de asse.  
lib. 1.*

*Martinum Sicu-  
lus de reb. Hist.*

*Thuanus hist.  
lib. 71.*

*Theaurus Po-  
lit. Apocles. 49.*

Hugo Lincol. in  
de Regno Por-  
tugallie.

Boter. Heretic.  
quæst. lib. 1.

*centia acceptare, vel habere.* And Philip the second his sonne publishing the Councell of Trent in the Low-Countries, did not let it passe in all points with the full strength of an Ecclesiasticall law, but restrained it with an expresse clause of speciall provision, that it should in no wise prejudice or diminish any priviledge the King enjoyed touching possessary judgements, or Ecclesiasticall livings, or concerning nomination thereunto: and surely the Kings of Spaine have the like prerogative in Portugall, because the Counsell of the State in that Kingdome had the right of presentation to all the Archbishopricks, Bishopricks, and Abbies: and King Philip the 2<sup>d</sup> being urged to make good his succession to that Kingdome by the sword, might assume to himselfe what prerogative hee pleased, for conquerours make their owne Charters: so that I cannot but conceive that hee in his wisdome for reasons of State in which he was most exquisite, did take into his hands not onely all that Ecclesiasticall power that the Counsell of State exercised, but also what did of right belong unto the Kings of Portugall. I will not now enquire whether our Prince hath such a supream power, *jure positivo Pontificio*; I am sure it is *jure divino Apostolico*: and supposing such a power, I will for more distinct proceeding, consider the severall streames and strings of this Ecclesiasticall power; and how they flow and are fastened to the head and top of Sovereigntie, paralleling them with the severall parts and points of this honour, discovering how they are annexed to these powers, and how they arise, are raised and stand by his Majesties lawes and Regall prerogative.

De mandis de o-  
rigine jurisdict.  
Ecclesiast. Con-  
clus. 2.

§ 3. All power Ecclesiasticall is either power of Order, or of Jurisdiction, and both these depend upon the power of Supremacie. For though these powers of order and jurisdiction be immediately derived from Christ the my-  
sticall head of the Church, in respect of their institution,

com-

commission, internall qualification, and deputation of persons to performe them; yet they are mediately derived from our Prince, the ministeriall head of our particular Church, in relation to their execution in the Church of England. For the power of *Order* cannot bee lawfully exercised in these dominions, without the licence or permission from the power of *Jurisdiction*; which power is originally derived from the Kings dominion over Ecclesiasticall causes and persons. So that it is plaine in general, that they are dependant on his Crowne and supremacy. To omit the jurisdiction *in foro conscientie*, that depends upon the power of *Order*, I will for a more particular view of this dependent derivation, consider the severall proper acts and workes of this Ecclesiasticall supremacy, which (as I conceive) may be reduced to these foure. The first worke is reformation of the Church in Doctrine, manners, and ceremonies. The second convocations of Councils and Synods, for the reformation. The third is promulgations of the lawes and edicts, proceeding either from his Highnesse pleasure in publicke declarations, upon advise with his Bishops, or the Canons or constitutions decreed or confirmed in his Councils. The fourth is, in receiving of appeales, and giving definite, determinate decisions, restitutions, and deprivations belonging to causes & persons Ecclesiasticall. Now all these acts have their effects in the power of jurisdiction, for the reforming power of it, is ordinarily and perpetually derived to Archbishops and Bishops *de jure*; to Archdeacons and Deanes, *de consuetudine*, to bee executed by them in their Provinciaall, Trienniaall, and Annuall visitations: but it is principally restrained to the correction of particular private persons, that are irregular erroneous disturbers of the Doctrine and Discipline of our Church. This power is extraordinarily *ad rempus*, granted to the Church representative in Convocation: (which

1. Eliz. cap. 1.]

petrus de Palud. de tract. de confessione art. 3.

His Majesties declaration prefixed to the Articles.

is not turned into a running regencie, rolling round to every particular *Presbyter*, though it bee not an ordinary standing Court) the calling of which is the second worke of Supremacie. To this Convocation thus called, there is given power and licence, to deliberate of, to order, and do all such things as shall concerne the settled continuance of the Doctrine and Discipline of the Church of *England*, obtaining his Majesties royall consent in the proceeding and determinations, (as it is plaine in his Highnesse declaration; not onely his permitting prerogative indulgence, as some will conceive it) the obtaining of which royall assent, doth not suppose the power of the Convocation in making Ecclesiasticall lawes to be more restrained than the power of the Parliament in making Temporal, because the one seemes to proceed as it were promoted by petition, the other upon the meere motion of the King; for the King that gives power to both by his Summons will in all probabilitie grant as much power upon an humble advised petition, as hee doth intend upon his free pleasure; and that for many reasons which I will not presume to produce, I onely urge one plaine instance to prove it, *de facto. viz.* The Writ & Summons which King *James* of blessed memory directed to the pious prudent Archbishop *Whitgift*, wherein his most royall assent was expressed, which gave the Convocation power to treat, consent and conclude of Ecclesiasticall lawes, during the prorogued Parliament; and what power can be fuller (in this respect) I know not. So that to conceive, that the Convocation hath not so much power, because the originall of its proceedings is from the obtaining of the assent of the King in expresse Writ, is as if one should inferre that the Common Law hath not so much power in this Kingdome as the Civill or Ecclesiasticall; because the Kings Bench, and all other Courts, ground their proceedings upon originall Writs,

and

and Commissions that issue out of the Chancerie, which is a Court of Conscience, whose processes agree with the Civill Law; whereas this argument is of more force to prove the antiquitie of the Civill Law in this Kingdome, than the present authority of it. But before I proceed any farther, I must of necessity take a little time (though to some it may seeme an impertinent Parenthesis) rejoycingly to consider the gracious countenance our pious Prince so freely shewes to this discountenanced, disabled house of Convocation. Little did any thinke, (no not that able absolute States-man, the last Lord-Chancellour, though he wished it) that his Majestie could have beene so fully and faithfully informed of the ancient power and priviledges of it, as thinke of restoring them, seeing not onely in the opinion of the people, but also in the practice of the Lower house of Parliament it hath beene long dismembred from that high Court, and lost all the power and priviledges as escheated to the same, insomuch, that it is questioned by some, whether ever it was a member of the Parliament or no. But it seemes his Majestie did soone apprehend it to be an essentiall part of it, and upon a short search discovered, that though heretofore it was a member, whose nerves were wrested, distorted, distracted and racked from its naturall head, by extention to a forraigne: yet there was no *dissolutio continui* (as the Physicians speake) from the head, and therefore not from the collaterall members; and seeing it was but a discontented discontinuance that did cause it to be suspected and suspended, it being now againe contracted and knit most firmly to the head, is united as closely to the members, and may safely exercise and enjoy all the power and priviledges that did of right belong unto it, with the Parliament; for though it was no reason, that it should have the priviledges of the Parliament, when it was distracted from it, and assembled without it by vertue of the Popes

Popes Legates Writ, by his Legantine authoritie, and so the power and purpose of it was forraigne, and justly came within the compasse of a *Premunire*, for the Clergie then was no true, or at least no trustie member of the Common-wealth, and so the Convocation cut off from the Parliament; yet when as it is now assembled with it, and by the writ of the King, and the Parliament is not compleat without it, being one of the three Orders, and that State which makes it have competent power in matters Ecclesiasticall, that it is not a meere temporall Court, and that in the judgement of those that had least reason so to esteeme it: certainly now the case is changed and therefore the course should be altered: for we finde 1. *Philip. & Maria*, cap. 8. that the Legate of *Julius* the third tooke great care to have Statutes repealed against the Popes supremacie, wherein he granted them to be authentically made, and consequently, that they had Ecclesiasticall power to enact them, otherwise by reason of nullitie, they had beene cancelled and abrogated in themselves. And *Antonius de Florebellis* an Italian Prelate in his *Panegyricke de restructa religione in Anglia* saith, it was done *honorifico universi Anglorum consilii decreto*: in which speech, hee supposed their power to decree it, which hee would not have done, if he had held it to be a meere temporall Court, and hee must necessarily have so accounted it, if he did not reckon the Upper and Lower Convocation Houses, as members of it, exercising equall power with equivalent priviledges, especially in the determination of causes which immediately concerne the power of Ecclesiasticall dominion, and the definite decisions of Theologicall contestations, for the cause is not alike when such assemblies are gathered together by supreme authoritie concerning other affaires of the Church, and when they meet about making Ecclesiasticall Lawes; because the persons that are of the one, the King doth voluntarily

in

1 *Phil. & Mar.*  
cap. 8.

*Florebellis O-*  
*rat. ad Phil. &*  
*Mariam.*



assemble, as being in respect of their qualitie most fit to consult with, and to consent to; them that are of the other hee calleth by prescript of Law, as having right to be thereunto called, and as the cause and persons differ, so the powers are divers: but the members of the Upper and Lower Houses of Convocation, are qualified in their persons, & capable by their priviledges, to be called to either of these assemblies, and therefore they properly pertake of the powers when they are so assembled. As it was plain in a particular example in that Parliament; for when Archdeacon *Philpot* was questioned for some words that passed from him in the Convocation house, he pleaded, that hee was priviledged to speake them, since the Convocation was a member of the Parliament; and this plea was not refused, but neglected. For they were not ignorant what was enacted by *Henry* the sixth, to wit, that all the Clergie, which be called to the Convocation by the Kings Writ shall fully use and enjoy all such liberties, as the great men, and Commons of the Realme have, that are called to the Parliament. And as they had the same priviledge, so it is plaine by a Statute *vicesimo quarto* of *Henry* the eight (though now abrogated) that they had once as much power in their receiving appeales from inferiour Courts Ecclesiasticall, when it was a *Præsumptio* to appeale to *Rome*, or else where. The words of the Statute, Printed in the yeare 1550: The partie grieved, may appeale to the spirituall Prelates, Abbots, Priors, and Proctors, convocate by the Kings Writ in Convocation: and if *de jure* the Convocation should not have power joyntly with the Parliament to enact Lawes *D<sup>r</sup> Stapleton* in his *Counterblast* might have some pretence to perswade the Clergie of *England* not to submit unto the Statutes made in Parliament, because no free man is bound to be subject to those Lawes that hee doth not consent to personally and immediately by himselfe, or by some that mediately

*Fox A<sup>d</sup>. Mon.  
pag. 1632.*

*8 Hen. 6. c. 1.*

*24. Hen. 8.*

*Conveniens est  
ut illi qui non  
plenissime par-  
ticipant usum  
rationis, diri-  
gantur in acti-  
bus suis perle-  
getur a per-  
fectoribus.*

*Durand. Epif.  
Meldensis de la-  
gibus conclus.  
1. 5. 3.*

27. Hen. 8. c. 19.

Ridley views of  
Ecclesiastical  
Laws.

undertaketh for him upon his choyce. That is something, and too much: but the Clergie will not contest with the Lawes, especially seing the King (whom they so willingly obey) doth confirme them and particularly command many of them by expresse Proclamation: but yet there is reason to wish it were otherwise, for what reason is there but that the Clergies submission to the King to be his subjects, should enable them to enjoy the libertie of subjects? But the State Ecclesiasticall by this course is denyed the right of a free independent Societie in relation to collaterall members, when as one would thinke that not onely the whole bodie of the Clergie should most fully enjoy all wholsome freedoms, but also that every particular person should rather be enlarged than abridged of those liberties he should enjoy as a common subject; for the Clergie uses to have more priviledges than the Commonweath, and that upon good, and godly considerations. So that the restitution of the Convocation, was a worthy consideration in his Majestie, seeing it is now as neerely and deerely, *de facto*, annexed to his supremacie, as the Parliament is, and so this supremacie is absolute and full. For his Majestie having two capacities of government in him, the one spirituall, the other temporall, by both these he hath supremacie, & this supremacie is chiefly exercised in the calling, presidencie, and dissolving of the great assemblie of the three States; which high Court is not competently correspondent to both those powers in the King, unlesse the Parliament consist collective of spirituall and temporall persons, which it hath anciently (if the Book *De modo tenendi Parliamenti* be authentickall) for that makes the Upper House consist of three States, the Kings Majestie, the Lords spirituall, & temporall; & the Lower of the Knights, Procurators for the Clergie, and the Burgesses; which both answer to the Kings mixt supremacie. So that as he is *supremus Justitarius totius Angliæ*, in relation to the

the temporaltie; so he is (as *Constantine* truly entitled him-  
 self in the Councell of *Nice*) *inimicus & persequutus* in respect *Eusebium in vi-*  
 to the power of jurisdiction in the Spirituallty. But to re- *ta lib. 3.*  
 turne to my present promise, and purpose, which was to  
 shew how the acts of supremacie have their effects in the  
 Ecclesiasticall jurisdiction, derived to the Clergie. And I  
 am now to shew what effect the power of promulgation  
 of Lawes hath; which is in declaring his Majesties con-  
 sent by confirming, and publishing the Ecclesiasticall  
 lawes which are agreed upon in Convocation, (not ex-  
 cluding the advise of the Parliament, because the State  
 Ecclesiasticall is not an independent societie, but a mem-  
 ber of the whole;) and from that promulgation they take  
 their first force and vertue. Whence it is, that they are  
 called the Kings Ecclesiasticall Lawes, by which the Cler-  
 gie is ruled in spirituall causes, according to which they  
 exercise their jurisdiction *in foro exteriori & contentioso*:  
 hence it is also that for this last age, the Ecclesiasticall  
 Lawes of this Realme have so well agreed with the Ci-  
 vill, because they passe not without the assent of the su-  
 preame governour. And it were much to be desired, that  
 Christian Princes would not onely permit lawes to bee  
 made, and give force to them by their authority, but also  
 that they would vouchsafe their personall presence, to be  
 Presidents in all assemblies for that end, for then they  
 would proceed and conclude to better purpose. As *Isi-*  
*dorus Pelusiota* writes to the Emperour *Theodosius* the  
 younger, to bee resident and President in the Councell of  
*Ephesus*: *ἡ μὲν αὐτὸς καμῶν κατὰ, παρὶν τοῖς χερσίν σου ἐν*  
*Εἰσὶν*: which is, that if he would be pleased to take so much  
 care, as to be present there, hee did not feare, that any thing  
 that should passe, could be faultie; but if he leave it to all to  
 be done by turbulent suffrages, *ἡς τὴν Σύνοδον ἐκκαταστήσει*  
*φθόρου*; Who can free that Synod from scornfull scoffings? his  
 Counsell was safe and seasonable, because the cause of

*Isidorus Pelus.*  
*l. 1. epist. 311.*

feare was very probable and eminent. For in a Councell, where there is a Monarchicall authority, a supreme power in one, there will be more dispatch in deliberations, more expedition in executions, than where multitudes of equals sit alone; for they will bee many of them over-wise, and most over-wilfull to agree in one point; when as every singular person will breach his particular project, and propose it as a publique law, with resolution to be a Recusant to all their lawes, if they will not bee Protestants to his: and so it comes to passe too often, that they are forced to yeeld to one another, or else no law should passe. Hence is that multiplicity, uncertainty, confusion and contrariety of lawes in some diseased States; than which nothing discovers a State to bee more desperately declining, though they are good in their particulars; for they shew the multiplication of ill manners, which *per accidens* begot them, and they are likely to make them worse, because they being appointed to amend them, are disappointed and disabled by their owne crosse contrarieties. As in a naturall body, over-growne and over-flowne with ill humours, if a Philosopher that considers onely a *Body*, neither sicke nor well, gives that which is good, *in tota*, in the height of health, (as *Hippocrates* calls it) and when he hath done, an Emperick come that considers it as sicke, but hee knowes not of what, nor the temper of the constitution, but boldly and blindly gives one medicine to all, for all diseases; and at last the judicious Physitian come and consider it as it is, and know what to doe, hee must first undoe all the other have done before he dare administer that which should first have beene taken, and by this time, the body is either past cure, or desperate conclusions must bee tryed to recover it. Therefore happy is our State Ecclesiasticall, in whose Convocation our supreme Sovereigne is President, so that the lawes passing with his Royall content, are certaine

*In corruptissima  
republica, leges plu-  
rimae, et labo-  
rat tam legibus  
quam flagitijs.  
Tacitus Annal.  
lib. 4.*

*Labat marchand  
1688. 1689. 23*

certaine, and easie to bee obeyed, by reason of their rare-  
 nesse and paucitie, which makes them pertinent, distinct,  
 and free from confusion. And therefore I doe not a little  
 marvell at learned *Baronius*, that since hee doth not  
 deny *Iustinianus* the Emperour the power of making Ec-  
 clestiasticall Lawes, hee should so scrupulously and busily  
 inquire, what should move him to meddle with the ma-  
 king of them; when as I doe not doubt, but the Clergie  
 then might request him to it. The last act of *suprema-  
 cie*, is to receive appeales, and give determinate decisi-  
 ons, and this hath its effect, and is exercised in the Ecce-  
 lesiasticall Courts. And they doe not exercise any power  
 that is not derived from this supremacie, either immedi-  
 ately, or mediately. So that as the Lawes they execute,  
 are the Kings Ecclesiasticall Lawes, so these Courts are  
 the Kings, and all the processees and courses approved by  
 his Majesties Lawes. *Non obstante*, that Statute 1<sup>st</sup> *Ed-  
 ward. 6. cap. 2.* For the Ecclesiasticall Law is *Lex terre  
 quatenus in Regno Anglia continetur Ecclesia Anglicana;*  
 and the usages and customes of the Church, are the rights  
 of the Clergie of *England*, without any relation to any  
 forraigne authority: and their ordinary processees lawfull  
 by the Kings permission, and the custome of many Courts  
 of this Kingdome, though they scale not with the Kings  
 Scale: for not onely the Marshalls Court, and the Court  
 of Admiraltie, which proceed according to the Civill  
 Law, use their owne proper Scales, but even Courts  
 of Counties Palatine, and the Courts of Corporations,  
 where the course of the Common Law is for the most  
 part observed. Now there is no ground for a *premu-  
 nia* in them, though the words of the Statute runne [*so  
 Rome or else-where*] for by [*else-where*] seemes to bee  
 meant, the *Romish* power or Court, (which was not then  
 at *Rome*, but at *Avinion* in *France*) and not our Bishops  
 consistorie. For I beleeve, that State was made to free  
 them

*Baronius An-  
 nal. Anno 528.*

*Babylonem Gal-  
 licam, ut Pe-  
 trarch. ep. 123.*

them as well from the foraine usurpation, as any other of the Kings Courts, as the pragmaticall sanction of *France* doth, which was of the nature, and I conceive in imitation of it about the same time, by *Charles* the seventh, brother in law to *Edward* the third. So that the Bishops resident in the Land had great reason to desire such an Act to free their Consistories from foraine inhibitions; and the Lords Spirituall (that are laid not so fully to consent to all the branches of it) where without doubt, the Abbots and Priors *aliens*, whose lands were alwayes to bee seised by the Kings prerogative, (*ratiant guerri*) & therefore had much more reason to feare the loosing of them by any other way; when as the Bishops were as much in the Kings power before, because his Highnes had then the right to seise a Bishops Temporalls for a contempt: which contempt, or any other just cause to ground a seisure, is in all probabilirie to be apprehended by the Kings Majestic, assisted by his supream Counsell; because the processe issueth from the power of his Royall prerogative, not to bee interpreted and extended to all the new-grafted branches of the old Statute of *præmunire*, (which seeme to have turned the nature of the stocke,) for then we might feare as many depredations, if not deprivations, (if the King were not really religious) as the Orientall Emperour *Isaacius Angelus*, (advised by that great Lawyer bold *Balsamon*) made in one year, *ὅταν αὐτὸς τοὺς ἐκκλησιαστικοὺς ἐν ὀλίγῳ χρόνῳ*. Now that some moderne immoderate interpretations doe strive to turne the intention of that Statute, I will draw an Historicall argument from this present example, viz. *K. Rich. 1.* curbing this profane Tyrant, (as *Nicetas Coniater*) *ὁ ἐπισκοπὸς τῶν νεγκρον* London *ἦν ἄνθρωπος ἀσεβής*; and *Rich. 2.* not being ignorant that the Emperours irreligious contempt of his Patriarchs & Prelates, was the greatest cause of being esteemed a Tyrant: & further also how he was challenged and derided by the Emperour

*Hervæus Natal. de potest. Papalis. & Eccles.*

*Stanford* prerogative in processu appertain.

*Idem ibid.*

*Nicetas Coniater Annal. lib. 2. Isaacius Angel.*

*Annal. in Alex. lib. 1.*

*Idem in Alex. lib. 1. & in Alex. lib. 2.*

*modi*

*2.1*



Emperor *Fredericke Barbarossa* for his supercilious carriage towards his Bishops whom hee sent Ambassadors. K. *Richard* the second knowing but this would never from the Statute of *Præmunire*, with an intention to intrap his Bishops. Yea wee may fully free him from any such meaning if wee do but consider that one maine ground of that Statute, was the grievance that Bishops were prejudiced by the Pope in their jurisdictions. But however it was then meant, I am sure it cannot extend to them now unlesse we will deny the Kings supremacie over all causes and persons Ecclesiasticall; and then they are not the Kings Courts; but if we grant the Popes supremacie, we must deny that any of his Courts Ecclesiasticall can incur a *Præmunire*: yea though wee extend the word [elsewhere] to the largest unthought-of signification, seeing they are as sufficiently secured against it, as any of the Kings temporall Courts: for not onely the high Commission sits by letters Patents of Commission, exercising the Kings immediate Ecclesiasticall authoritie: but all Bishops also sit in Consistorie by vertue of the Kings Broad Seale: for the election of a Bishop, which enables him to exercise the power of jurisdiction, and consequently to sit in Consistorie, primarily proceeds from the Kings great Seal annexed to the *Compte Dessein* directed with his Majesties missive letters to the Deane and Chapter; and moreover upon their certification of the Election the King signifieth the same to the Archbishop of the Province by his letters Patents under the great Seale, that hee may confirme the Election and consecrate the person: and besides this especiall royall permission, and approbation of every particular election granted by our present sacred Sovereigne, in relation to the person of every nominated Bishop, there are also Charters descending from the Crowne to every particular See, in right of their erection, which give securitie of this jurisdiction to succession; and  
if

if all this be not enough; surely *Magna Charta* is abundant *Capitula* in this case (if the first Chapter be not held Apocryphall; being it was before any grane was to the rest of the Realme) I omit to mention many particular Statutes as *Articuli Cleri* in 9. of Edward the second: & *pro Clero* 15. & 28. of Edward the third, which have of life enough in them, if the King please, though Abridgers pronounce them expired. A prohibition, I grant may lawfully lye there, because it is safe for the whole State, that every jurisdiction should have its bounds, and keepe or be kept in them. But yet I will not say so in general, but we must admit them with distinction of prohibitions, one of Law, another of Fact. Now that prohibition which is of Law, according to the expresse words of the Statute, (which are commonly large enough) is the prohibition that is lawfull, as for a prohibition of fact, which is grounded upon sophisticall suggestion seldome fundamentall in the copie of the libell, without the judgment of the Kings Courts upon it, in my opinion it is not right, and is many times the cause of wrong, either in injustice or delays; yea & an abusing of the Statute with the Kings Courts: whenas if such a suggestion were seconded with a surmise of the Sages of the Kings Bench upon view of the libell it is most probable to be right; and I durst to venter any cause meere Ecclesiasticall that should most concerne mee into their hands not doubting of a conscionable consultation. And for the prohibition of Law, the most I conceive it inferres is; to make all the proceedings void, as *Coram non iudice*: But if I might know, what degree and qualitie of offence it is, for a Court temporall to hold plea of a meere Ecclesiasticall cause, I should more easilie apprehend the scandalous nature of the ground of a prohibition, which it may be, is the same with a writ of error in the temporall Court; since that a conclusion doth not ensue upon that, but after a prohibition ground-  
ed

ed upon a suggestion. Well, *ita videtur* was the forme of the Senators safe giving their opinions, and I hold it wisdome for mee never to be peremptorie, especially in a matter so uncertaine and involved. So then, all the proceedings of these Courts, have their power from this last act of supremacie, as well in primitive processe of inquisition, as in punitive processe of execution. As this most authenticke authoritie is most seene in the proceedings *ex officio*, which are not onely, nor alwaies by oath, (as many are mistaken.) These are by immediate commission, where an Ecclesiasticall cause is criminall, especially *ex mero officio*: not promoted at the instance of any partie, or by processe informative. And so also the newest punitive processe Ecclesiasticall, which is a writ *de Excommunicato capiendo*, is evidently derived from the Kings power, and issueth immediately from his favour to the Church, that it may be more easily obeyed, and is divers and variable in sundrie governments, and executed by temporall power, being nothing of the nature of the spirituall excommunication, but an accession *concessa permissione ex devotione Principum* (as *Johannes de Paris* saith against *Boniface* the eight:) for this writ issueth out of the Chancerie upon the Bishops *significavit*, that the partie hath wilfully stood excommunicate 40 daies, *majori excommunicatione* (which limitation I finde to be a privilege of the Church of England above all Christendome) and the words of the writ run thus: *vis. Quod hujusmodi breve nostrum de gratia nostra procedat*: which words shew that it is a processe annexed to the power of excommunication by the Kings favour, at such a time as the Ecclesiasticall Judge doth certifie that he can proceed no farther (according to the rule in the same Register) *Potestas Regia Ecclesia in suis querelis deesse non debet* and indeed it is but a calling upon the secular power, and leaving of those that are contumaciously incorrigible in the

*Johan de Paris.  
de prestat.  
Reg. Concl. i.*

*Regist. in brev.  
original. p. 68.*

*pag. 65.*

Epist. 121.

Isidor. Hispal.  
de summo bono.  
43.c.53.Arist. Rhet. lib.  
3.c.11.Dion. Chrysost.  
de Baſilias  
β.Prov. 30.  
Vn principa-  
tu beatissimum  
est, non cogit, non  
misericordum;  
non suadet.  
Lipsius epist. de  
dicat. Politicor.

hand of Civill justice, that seeing they would not be reformed by the spirituall sword, they may be purged out of the Common-wealth if the offence require it, (as *Synesius* speaks in the like case) in *Superior Epist. πρὸς βασιλέα καὶ ἀρχιεπίσκοπον*: the publique sword, which is the civill Purgatorie, is to punish those whom the spirituall punishing censures of the Church do not worke to amendment, *ut disciplinam quam Ecclesia humilitas extrahere non prevalet, coercitibus super horum potestas Principum imponat*. As for the judgments of Bishops Consistories, as they are derived from the power and law of Christ the great Bishop: so they are like the judges of them, who are rather Arbiters & amiable composuores. (as *Panormitanus*) than Judges ruling by the austeritie of authoritie, so that poore defendants may flie to them, as to their Altars, who are Ministers of the altars: and in this sense, that which *Archidius* speaks is most true, *τὸ αὐτὸ εἶναι δίκαστῆρα καὶ Βασιλέα, Idem esse arbitrum & Anam*. And though they have no forcing power, but from the King, and no power of any force against the King; yet the greatest and best Kings have yielded to them in their advice, not as Prelates, but as they are Fathers in God, (as *Alexander* the great said to his father King *Philip* *Ἐγὼ πατὴρ βασιλεὺς, ἀλλὰ οὐκ ἀρχιεπίσκοπος*: that is, I do not heare and obey you, as you are supreme King, but as you are my father;) farre unlike the Bishops of Rome, who will rule the highest Princes, and yet profess themselves servants of servants; which makes mee call to minde, the observation of the wisest King *Solomon*, that one of the chiefest instruments whereby the earth is shaken, is, a servant that rules over Princes. And as they usurpe rule, so they usurpe the sword of temporall Princes, and carrie it in the spirituall scabbard; and drawing it, doe more hurt in their passion, than they can help by their priviledge; when as they found it soberly and orderly put up by *S. Peter* when Christ was

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Bellar. de Cler.  
lib. 1. cap. 10.

Hooker Ecclef.  
Polit. 1. 1. S. 17.  
Bellar. de amif.  
Gratia. l. 1. c. 1.

In conclufioni-  
bus juris natu-  
ralis sunt gra-  
dus, & immu-  
tabilitas, qua  
est conditio juris  
naturalis, magis  
apparet in ali-  
quis quam in  
alijs. Durand.  
Epifc. Meldensis  
de legibus Con-  
cluf. 9.

moderne legall restraints, and *Gleablands* granted, Tithes and Oblations confirmed, and all constrained to be paid. Now tythes that are only confirmed by the Kings positive Lawes, are supposed to bee due by some other Law of higher nature than the Kings; which is not any for-aine Law, as the *Ius Ecclesiasticum*, (as *Bellarmino* in this particular case calls the Canon Law) it must bee then by Law divine; or immediately arising from supernaturall & morall considerations, which Law we grant to be positive, yet not meerey humane, nor changeable in respect to us: and they must necessarily runne into many grosse errors, that take onely such Lawes for positive as are invented by men; and thence conclude them mutable. And therefore I presume that the learned *Selden* doth so understand the positive Law, by which hee holds tythes to be due, not in opposition to divine and morall; but as specially diverse from it (as it partly appears in the whole drift of his History) where I doe not beleve that any can finde that hee ever delivers his judgement, denying them to bee *jure divino*; so that in my apprehension, and I hope not against his intention, he may doe the Church much good in relating what wrongs the Clergie in all ages have sustained. For his Historie is onely *de facto*, what hath beene done; hee gives not his judgement *de jure*, what ought to have beene done, which if he had, he would assuredly have pronounced for them; and this I am forced to beleve, when I consider his exact generall knowledge, & the reverent respect he beares to authentique antiquitie. I do not in this confesse that they are not *jure divino*, because I affirme not them to be due by the Law of *Moses*, that is no direct consequence upon my proposition; for not onely the judicall Law which was the command, and I beleve in most points is still the Counsell, of the most wise God (especially in this particular where the ground of the command is morall) doth proportion a tenth part



as necessary then to be paid; and though the same necessity binds us not now, yet the correspondencie of the conveniencie (as I conceive) doth hold us as strongly to it as it did that State. For I see no inconvenience in tythes-paying in our State more than in theirs; but onely they were brought home unto Priests, (which onely exception *M<sup>r</sup> Cartwright* makes against tythes.) But I stand not only upon this, but I am also partly perswaded, that they were confirmed by Apostolicall approbation, though it bee not in expresse words so set downe. For though the Apostles did all preach the Gospell, yet they did not all write, neither did those that did write commit all to writing which they did teach: for *S<sup>t</sup> Paul* adviseth the *Thessalonians* to keepe the traditions they had beene taught either by word or epistle. And therefore it is freely acknowledged by a famous Orthodox Divine of our owne, *non omnia esse scripta in libris veteris & novi Testamenti, quae Apostoli aut docuerunt aut fecerunt; sed fatemur Apostolorum ritus & consuetudines sancisse, non autem scripsisse*: hence it is probable, that they might by consent confirme them, because it was not onely a custome and a Law then in force, and they did not delight to innovate, but upon necessitie, but also because we doe not finde one word of their abrogation or alteration. Yea it seemes to me that the Author of the Epistle to the *Hebrewes* entitles the Ministers of the Gospell to them by a more particular right, (as *Bishop Androwes* calls it) *jure Benedictionis*, for it is not onely said that *Abraham* paid *Melchizedek* tythes as he was the highest Priest, but that hee received them and blessed him; which implies blessing to be the duty he performed for them. And whatsoever we hold of these tythes, I assure my self the Primitive Church did so conclude, otherwise they would not with such a generall consent have bound themselves to that incense and portion of maintenance. I speake of the Church in *Bartholomaeus*, it was

*Annot. in Rhem. Test. 7. Heb.*

*2 Thes. 2. 15.*

*Whittaker. cons. Bellar. quast. 6. cap. 6.*

*Heb. 7.*

*Benedixit non tantum ut privatum ex devotione, sed ut superior ex autoritate.*

otherwise with them I confesse *in statu perturbato*, in persecution; but not out of good choyse, but hard chance. For observe but from the first generall Councell of *Nice*, (not to reckon upon Provinciall Synods, because they doe not bind our State but onely in point of Doctrine and Example) peruse them till the last of the *Laterane*, and you shall finde they are plaine and peremptory. And not onely in the acts which in some Councells are erroneous, (as in the second Councell of *Nice* being the seventh generall) but in the Canons which were received as generall Ecclesiasticall determinations: there is a Canon very particularly passed with a generall consent; so in the Councell of *Laterane* under *Innocent* the third, where it is particularly set downe that the *English* Ambassadors were present, there is a Canon that runnes thus, *Statuimus quod solutio decimarum precedat exaltationem tributorum*. We have nationall Councells also as at most Coronations of the Kings before the conquest, and also immediately upon the conquest; and many generall Charters wherein tythes have beene confirmed to the Clergie, and that with solemne vowes and deprecations, which dedication to God, if there be no other divine right, puts the detainer of them into *Ananias* and *Saphira's* case; because that though while it was wholly with them, it was their owne; yet when it was thus separated by their solemne vowes, then sanctified by the solemne act of Bishops; not onely ratifying the Founders vow, but consecrating them with the Church to divine uses, the nature, property, with the propriety was changed. So that I will conclude these premises, that the positive Law by which tythes are due to the Clergy, is not meereley humane, but mixt and preternaturall, because it binds men as they are members of the supernaturall society of the Church visible: and because they have bound themselves by it in divine consideration. But yet they

Balsamon concil. Nicen. secundo can. 12.  
Concil. Lateran. 4. can. 54.

Acts 5.



*Dier. reports fol. contra statutum postea editum, & be groundd upon a good*  
 373.

*Duarenus de  
 benef. l. 6. c. 1.*

*4 Hen. 4. c. 7.*

*Barolus ad Col-  
 legia si qua fue-  
 rit de Collegiis.  
 ff. 47.*

custome, and the person qualified, to possesse the thing claimed; for lawfull prescription cannot proceed without as lawfull possession. The want of these lawfull limitations made the Councell of *Laterane* under *Alexander* the third, condemne and controule the grand prescription of *Clyentary* tythes continued from *Charles Martellus*. The taking away of which shirking shifts made many devise another, which is Priviledge either of societies or persons, granting immunities from payment of tythes, which pretence of all others (as farre as I can understand) cannot be made good by the most favourable forced interpretation that may be; for they are void and nullified according to all the restraining Provisoos that bound a priviledge. For they were granted against the law of God and nature, not onely besides it; and are since revoked by the same power that granted them, as *Innocent* the third in the fourth *Laterane* Councell. And in this particular Kingdome *Henry* the fourth made many Statutes to restraine those priviledges granted to the Friars, especially providing that none should have any *de novo*. But that which proves them void in this Kingdome, is, that not onely the particular persons, but also their whole societies are dissolved and destroyed; and so they are expired and extinguished with them: *Destructo Collegio per-  
 vunt privilegia*, especially when their revenues are confiscated, & *non privilegiatus prescriptio, non succedat pri-  
 vilegiato*. But when other meanes began to be restrained, they procured appropriations and annexions of benefices presentative, not onely in point of pratronage; but also they tooke the whole due without discharging any of the durie; which last and worst pretence I will not denie but the wit of man may make it plausible, yet I am sure it will never bee pleasing to the will of God. Monkes and Friars were the authors of these immunities and appro-  
 priations;

priations, (to omit customes and prescriptions, because they do not so much wrong, and have more ground of right:) I do not accuse the Monkes who lived in the first five hundred yeares after Christ; who lived holy, and laboured in their callings, and had no such priviledges. Neither do I condemne *Benedict* who was the father and first founder of all that professed a regular life in a sequestered cloyster in the Western Church. For hee had good reason so to doe, considering the tumults and many broiles that fell out under the government of *Justinian*, & by reason of the continuall incursions of the barbarous nations into *Italy*. But when he was thus shut up, many resorted unto him, admiring his devotion; at last they tooke rules from him, and grew into a fraternitie of the *Benedictines*; and from them sprang many other Orders; who living in a life far different from other men, bred great wonderment in all, & that admiration procured adoration of their profession, and made those that were able bestow great revenues upon them: Yea they did so dote upon them, that after a while they endowed them, if not with the greatest, yet I am sure the best and fattest part of their Countries; insomuch that most of the most pious Princes of Christendome were forced to make a Statute of *Mortmaine*, (like *Moses*, who made the first Statute of *Mortmaine*) for these revenues which they possessed were in a dead hand, that did no good to the Common-wealth. Whence wee may observe that this Statute was rather for the benefit of the Common-wealth, than made out of the dislike of the Church meanes; especially since these Friars were not of the Clergie, but meere Lay-men; and the Clergie had as much reason to desire a law for Amortization as the Common-wealth, because as they had conferred lands and goods upon them; (for not onely Princes, but Popes were taken with admiration of them) so they were also more charged with the publique; and had lesse meanes.

*Hospiannus de  
origine Mona-  
char.*

*Thom. Combe  
de B. de  
Com. de B.*

Exod. 32.

*Dudrington de  
benef. l. 2. cap. 1.*

*Flavius Chon.  
Compend. Bullar.  
tom. 1. Paschal.*

And this Statute gave the occasion to them to procure privileges and immunities from payment of tythes. For though at first for a time they came to their Parish Churches, yet when they procured to have Churches or Chapels of ease for their fraternities; then they obtained under *Alexander* the third in the *Laterane* Council, when he condemned prescription, to be confirmed & privileged from payment of tythes of those lands which they called themselves; when as *Adrian* the fourth our country man, his immediate predecessor had revoked or restrained the immunities granted to them by *Paschal* the second. But when *Innocent* the third, who loved to be doing and undoing, restrained the grant of *Alexander* the third, which they perceived did much prejudice their plentiful profit, they procured dispensations from the Pope to have parsonages appropriate to their houses in a more great abundance. For I deny not but some were annexed before, as to the Abbey of *Crowland*, and others; yet these were granted more by the Popes licence than the Princes authoritie. And then began the Schoolemen to entangle the right of tythes, & their curiositie and their covetousnesse enabled them, and put them upon it: for when, under *Innocent* the third, they multiplied into multitude, (as there were sixtene orders set up in that Centurie) and hee limited and lessened their revenues, they sought to maintaine that by right which before they had obtained by wrong, and retained by protection and privilege. Then began the contention betweene the Schoolemen and the Canonists about the right of tythes; and I conceive *Innocent* the third to be of the Canonists part, because hee was the first great advancer of them in the Church, and no free friend to the Friars. This I have conceived by comparing Church histories and the Councils with the Canon law especially Decretalls. These wrongs of the Clergie which were so brogght in & upheld, so continued  
in



in our Kingdome till *Henry* the eighth of famous memory; (who either intending a reformation in religion, seised upon the revenues of religious houses; or aiming at their revenues set upon rather than finished a reformation,) confiscated their appropriations to his use, as escheated with their lands, and seised upon these benefices which were not theirs, but mortgaged as it were to them, and he possessed the Crowne of them, and then sold them to private men; who hold them by as good right by the Kings conveyance, as the Monasteries did by the Popes privilege, but no better, though some would willingly perswade themselves that they hold them by as right and just law, as they doe any purchased inheritance; for they say, though they were once spirituall, yet now they are made temporall and Lay-sees by the lawes of dissolution; especially in the two and thirtieth of *Henry* the eighth. It is true that those statutes apply diverse law termes, (I will not call them meere law-fictions) to those things that properly belong to temporall inheritances, and have made them demandable by originall writs, and given order of conveyance, by deed, fine, and act of Parliament; which as it is bookelesse, so it is contumacie in any private subject to question onely this much I hope I may say without generall offence, or disturbing of the statute, since I conceive it the truth, and yet not all the truth; I doe not yet understand how that can bee made manifest to be a free Parliament in that point. For I doe not beleve that the lower House did either propose, or generally approve it, though they assented to it. Neither do I thinke, that King *Henry* the eighth did freely propound it out of his owne choyce, but that the necessity of the present time did put him upon it. And I hope he intended to call it in, if he had lived. As *Dionysius* the King of *Syracusa*, when his treasure waxed too short for a great employment:

*Im Subtile est  
iur, sed non san-  
ctum, at non  
legitimum sed  
est legitimu-  
m.  
Bressan. de ver-  
borum signif.*

*institutio  
2 no*

*Polyan. in Stra-  
tag. lib. 3.*

Ἀπαλλοτρίωσις τῶν Βιβλίων ἐν τῷ ἀρχαίῳ ἀνατολίῳ: he commanded to  
 take the treasure of *Esculapins* his temple, & to proclaim  
 them to be sold in the market, as profane and common  
 commodities, which the *Syracusans* were very eager to  
 buy, because they had Church-bargaines. But when hee  
 had gotten what his necessity required, he presently sent  
 forth an edict, *ut si quis* Ἀπαλλοτρίωτον ἀγοράσῃν βιβλίων, οὐκ ἔστω  
 οὐ, that if any one had bought those devoted treasures,  
 they should againe restore them to the Church. This  
 course had bene somewhat just, if he had let them enjoy  
 the treasures, untill they might have regained by them  
 what they cost, (as perhaps most purchasers of Impro-  
 priations have.) But that which most hinders mee from  
 apprehending it to bee a free pure act, is, because the  
 most active and spirituall part in Parliament was pit-  
 tifully passive in it; it was at the best, but mixt by re-  
 action in the patient Clergie, who did neither abso-  
 lutely obey, nor resolutely resist, but silently suffer that  
 to passe, which was not right; and therefore the act  
 was not free from wrong. *Qui tacet consentire videtur;*  
*id est, taciturnitatem inducere consensum in ijs in quibus*  
*expressus consensus non requiritur, & in judicialibus con-*  
*fessionibus.* Neither doe many of the judicious Sages of  
 our Common Law so fully approve of it. Yea Sir Fran-  
 cis Bacon in his Considerations of the Clergie of England,  
 dedicated to King James of peaceable memory, confesses,  
 that he was of opinion, that all the Parliaments, since the  
 twenty seaventh, and thirtie first of Henry the eight,  
 stand obnoxious and bound in conscience to God, to doe  
 somewhat for the Church, to reduce that patrimonie;  
 or that, since they have debarred the Church of her dow-  
 ry, they should make her a competent joyniture. Which  
 opinion of his, is more ingenious, in my apprehen-  
 sion, and advantageously pertinent than theirs who on-  
 ly conveigh against the Parliament, and Henry the eight  
 the

De divinis libris  
 p. 100. h. 1. 1. 1.  
 non in. cautio  
 h. 1. 1. 1. 1. 1.  
 Cyphar. in L.  
 qui tacet. 142.  
 ff. d. divers. reg.  
 jur.

Considerati-  
 on 6.

the head and rule of it: which act (admitting the necessity then that urged him to use the power of Ecclesiastical dominion) is not altogether inexcusable, (though this reformation did more wrong to the Clergie than the conquest:) For what hee was to doe, was to be done in haste; and in that routing-rush of reformation, who could expect but the part corrected, must needs be for the time neare to utter ruine; though happily, if the author of the reformation had lived to finish it, amends would have beene made in some measure. And this opinion of this most able Chancellour seemes to make a continuall claime for the Church; that shee may not bee barred by Non-claime, that her title of right be not extinguished by suspension, or the possession of the Occupant. But *Henry* the eight did rather put downe the *Roman* Church, than set up ours; as *Alexander* the great pulled downe the *Persian* Monarchie, but set not up the *Gracian*. But to pull downe one, was the onely way to set up another; as *Aristotle* rooted out all the opinions of the former Philosophers, to set up his owne; or as *Hippocrates*, who being *Librarian in Coos*, *παραμὶ τῶν ἱατρῶν ἐνέπρησι βιβλία* (as *Zetzel* in his *Chilads*) hee burned the bookes of all the ancient Physicians, to set out his owne, or theirs as his. So that if a publique reformer begin once to alter, hee must of necessity, for the time, stirre, if not remove, more than he first intended, especially if he be crossed and curbed by an adversary, that stands strongest by that part which needs reformation, and by that in it, which will best helpe him in the performing of it. For hee that will prevale against an incroaching enemy, that hath a party in his Kingdome, must be sure with all apt industrie, to observe and oppose him in his counsels, by bereaving him of his Counsellors & Agents, either by taking them away at once, or putting them as Exiles from him, or pulling them to himselfe, which is the safest and honourablest

*Hottomannus in  
Bruto fulmine,  
de prima nulli-  
tate ob crimen  
Majestatis, &  
perditionem.*

course.

course. Now the Pope who was the absolute insolent adversary to *Henry* the eight, stood by the Monkish part of the Clergie, and chiefly by their rich revenues; and therefore, it behoved the King, either to reconcile them to himselfe, or utterly to ruine them (as fell out, because they rebelled.) And in the prosecution of them, he ranne a cleane contrary course to the Pope. As I remember, when *Cyrus* tooke *Babylon*, he drew *Euphrates* drie, and made all land: And *Xerxes*, when he went against *Athens*, would have made all sea; *Εὐφράτης ὅλην τὴν γῆν ἱμῶσι Σάραων*: So *Henry* the eight made all Lay and land, when he intended to be free from the usurpation of the Pope, and the Pope made all spirituall and his See, when he aimed at his absolute unrestrained extravagancie both in See and Scepter. This heate and height of opposition made the King proceed too farre, which, I beleieve, he did somewhat perceive, in that he did retract in some particulars from the first course: As in erecting some Episcopall Seats, and more Cathedrall Churches, out of the ruines of Monasteries and Priories. And in that he made of the appropriation of *Royston*, a Parish Church. And I presume he might have proceeded farther, if he had not beene soone after cut off by death, and hindred by profane and sacrilegious instruments while he lived, who, I perswade my selfe, were the same men and meanes, that tried to procure the dissolution of the Bishopricke of *Durham* by act of Parliament, during the nonage of *Edward* the sixth. Perhaps out of a pretence of scandall, holding that question affirmative against *Thomas*, *quod Episcopi debent temporalia dimittere propter scandalum*; and happily they might incense the King to bee of their opinion, because *Thomas* brings a scandalous example of *Thomas Becket*, that did *repetere temporalia Ecclesia cum scandalo Regis Henrici secundi*. But they should have beene so religious as to distinguish betwixt the dissolution of Abbies, and Bishop-

*Dion. Chrysost.*  
*de Bas. γ.*

*Monachi ferocientes exasperant Lutheranam tragediam in sumum malū.*  
*Erasmi epist.*  
*Warano Archi.*  
*Canthuarien. lib.*  
*20.*

33. *Hen. 8.*

7 *Edwards sexti*  
a not-printed  
Statute repealed  
1 *Q. Mar.* Parli-  
ament 2. c. 3.

*et monasteria*  
*et omnia*  
*et omnia*  
*et omnia*  
*et omnia*  
*et omnia*  
*et omnia*  
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Bishopricks, since they were really distinguished in their constitutions (not to speake of their confirmation nor consecration) the one beeing *jure divino Apostolico*, the other but *jure Ecclesiastico positivo*; so that though in politick prudence in relation to particular State occasions, reason might give way to the one, yet religion would not permit the other. Surely King *Henry* the eight would have beene so farre from approving this project, that hee would in time have distinguished upon the dissolution of Abbies, betwixt their lands and their appropriations, and have plainly discovered that the truest criminall cause why God by his power wrought their ruine, was their sacrilegious detaining of spirituall maintenance, and what hee would have then inferred, let them conjecture that are their successours in impropriations, So that the unhappinesse of *Henry* the eight, is, because men judge by the event, not knowing the intent, (as *Paulus Jovius* <sup>*Jovius de vir. illust.*</sup> with many Moderne modest historians exclaime of him.) In my minde, hee may be well paralleled with *Charles Martell*, the Champion of the Church, who, when hee defended the Pope, was the first that was called *Christianissimus* among *French Kings*, by *Gregory* the third; yet he was the first that robbed the Clergie in *France*, by giving *Clientary* tythes, which they call *fendall*, to his followers: yea and he deposed the Archbishop of *Rhemes*, and disposed of the Bishopricke to one *Milo a Cavalcere*: So *Henry* the eight had first the title of the *Defender of the Faith*, for publishing a booke against *Lutber* (which *Bellarmino* <sup>*Bellarmin. de script. Eccles.*</sup> *Bishop Fisher* wrote) and presently after fell foule upon the Clergie. So that (I beleave) the Pope repented of the title, and was ready, not to give him so good a title, as his predeceffour *Inlin* the second gave *Inlin* the twelfth of *France*, in his Bull, which *Guccius* <sup>*Gucciard. hist. lib. 11.*</sup> notes to proceed from malice, *Nella nominando lo, non più Christianissimo, ma illustrissimo*; that is, Hee would

*Guicci. Hypomn.  
Polit. 123.*

would not call him the most Christian King (as was his title) but the most illustrious. But let him bee as bad as they will make him, yet I dare excuse him, as *Baronius* doth *Marcellus*, and say of him as *Guicciardine* said of the Popes, that hee was an honest man, because hee was not more wicked than most men. I have in this as far as I am able with a good conscience, cleared our State from the forraigne fame of sacriledge. But I cannot free particular men from it, which have no pretence for what they detain, or take from the Clergie, but onely that they are not convinced that there is such a sinne as sacriledge; and that because they hold not tythes due *jure divino*, and that because they desire still to have and hold them by the law of the Land, and that they may more colourably continue it, they hold no such sinne as Symonie, that the partie presented may make a symoniacall contract, whereby they are confirmed and corroborated in their sacrilegious usurpations. But I will not dispute the point, whether there be any such sinne as Symonie, in relation to a private presentation without respect to orders taken with it, because I am sure, none will deny, but where there is a symoniacall contract, there is perjurie in the Instituted. And it is to be observed, they that so come into the dignitie of the Church, committing an outrageous act of irregularitie, prove most an end pernicious instruments; as *Isidorus Pelsiota* saith of *Caiphas*; *Καίφας ἐπαύνην ἀνέσχετο, ὅτι κατὰ Χριστοῦ ἐξώμενος*. that is, that *Caiphas* bought his Priesthood, and therefore armed it against *Christ*. As for sacriledge, I grant it is not easie for men that are guiltie of it, to be convinced that it is a sinne. For sinnes of omission cannot so quickly and sharply touch the conscience, because they are the breach of an affirmative law which doth not so strongly check the vice, as in forme to the dutie; especially when pleasure or profit have bribed the judgement. For I feare, some hold stolne

tythes,

*Isidor. lib. 1. ep.  
315.*



tythes, the sweetest part of their inheritance, as it is said by the Epicures; *ἐν τῇ πικρύνει τὰ γλυκύνει πάντα τὰ κατὰ μὲρος Ζεὺς*; *hif. Nektar diglax* *hif. golas*; i. e. who doting upon voluptuous sweete delicates, called the tenth part of honey *Ambrosia*; (and perhaps that sect set up the trade of Bee-mongers in *Athen*; (as *Synesium*) *νῦν Ἀθῆναι ἡγοῦσι Μελιττοπολῖς*.) So I am afraid, the tickling sweetnesse of tythes, is the cause, why the smart and fowmesse of sacriledge is not felt, nor tasted. And therefore in my opinion, *Thomas Aquinas* doth well, to make sacriledge, *speciem luxurie*; so that it may be a sinne, and yet they never be convinced of it, for desire of profit will lull the conscience a sleepe and waken & sharpen the wit to prove any thing that we are resolved to approve either out of faction or affection. But thinke they what they will I am sure, not only the ancient Fathers of the most pure primitive Church, but even the godly Emperours did esteeme it a sin, & that in so high a degree, that when they granted generall pardons at Easter, and other solemntimes, they excepted sacrilegious persons: As *Theodosius* the great, *ob diem Pascha, quem iustino corde celebramus, quos reatus astringit, carcer includit, solvimus; utamen sacrilegus maxime a communione istius muneris separetur*. So also *Gratian* and *Valentinian*; *Religio anniversaria observationis huiusmodi, ut omnes periculo carceris, & metu pecuniarum eximi jubeamus: verum eos excipimus, quos scelera graviora compulerunt, ut qui sunt sacrilegi & sepulchri violatores*. So in many of the Novels *τῶν ἀποτῶν παλαιῶν*, upon Easter day set all persons free *ὅτι μὴ τῇ ἡμέρᾳ τοῦ εὐαγγελίου*, but if any be guiltie of sacriledge, let him be kept still in hold. So that you see, it was reckoned *inter extraordinaria crimina* in those dayes; yea it is so accounted by the common Law of this land; for by it a sacrilegious person shall not enjoy the privilege of his Clergie: and so it would be thought with us, if profit did not blind the judgement in the

payer of tythes, and indiscreet covetousnesse lead many  
*C. quicunq; 16.* Clergy-men to make no distinction betwixt free and  
*g. 7. c. nobis. c. vii.* friendly compositions with a bountifull Patron and sacri-  
*d. iure patronas.* ledge. In my poore judgement, the Canon Law is but  
 just in decreting, that *Si patronus Laicus ad inopiam fu-*  
*orit redactus;* hee must have some competent sustenance  
 from the incumbent, especially if hee have not bene sacri-  
 legious, and so by Gods judgement brought to it. And I  
 do conceive, that this may be, notwithstanding they doe  
 not charge any parsonage with annuities rents, which is  
 prohibited by the Statute of *Elizabeth*. Thus it is plaine,  
 that the revenues and maintenance of the Clergie are pos-  
 sessed by the Kings Lawes, and may be demanded as due  
 by them.

3. *Eliz. 2.*

*Magna Charta.*  
*cap. 1.*

*Lincolne pro-*  
*sancto de paria*  
*verb. Charta.*

*Dion Chrysost.*  
*de i. Hierosol.*

7. A. T.

5. 5. The other part of the honour of the Clergie, an-  
 nexed to the power of order, is in priviledges, and immu-  
 nities; by which this power is exercised with more ease,  
 delight, and respect; and as it were, with the whole man  
 without distraction. Now all the priviledges the Church  
 doth enjoy or desire, arise, and are raised by the Kings  
 lawes and royall prerogative. As that ancient, often con-  
 firmed *Magna Charta* doth fully confirme all the former  
 priviledges of the Clergie. And decreed, that the person-  
 sators, the disturbers of them should be excommunicat-  
 ed *ipso facto*; upon which words Archbishop Boniface  
 grounds a provinciall constitution to the same purpose.  
 And that was then favour enough, for then they had pri-  
 viledges to a surfeiting superfluousness, but now the Cler-  
 gie stands in more need of them, and they humbly ex-  
 pect them onely from the favour of their Princes, who  
 hath a plenitude of power to grant more and larger pri-  
 viledges, than ever they will desire. For all the privi-  
 ledges are granted in relation to some Law, and the power  
 of an absolute Prince is above all Lawes. As *Dion Chry-*  
*stosome* told *Julius Trajanus* *Barbarus* *non videtur quilibet* 2. or

as the same Counsellour to the same Emperour, τὸν νόμον βασιλευσέτω: which *Cajacius* explains and limits to con- *Cajacius observ.*  
 active corrective Lawes, which *Dion* saith, began in *An-* *lib. 15. c. 30.*  
*gustus* dayes, and τὸν νόμον Ποιῶν νόμον ἑαδὲ ἀσθενῶν  
 none of the ancient *Romans* were freed from lawes, τὸν νόμον  
 ἐλαύσαντες ἀπὸ τοῦ νόμου ἀπὸ τοῦ νόμου νόμον, that is from the ne-  
 cessity of obeying. *Nemo cogitur à seipso, sed Lex non ha-*  
*bet vim coactivam, nisi ex Principis potestate.* And I doe  
 beleieve, that the Scriptures (seeing that they say more  
 for the right of Kings, than any booke in the world) doe,  
 if not fully set downe this power, yet permit it with ap-  
 probation in some cases, especially for the publique good  
 of the Church, which, I am sure, is a farre more conscio-  
 nable and commendable course, than to accommodate re-  
 ligion to serve the turne of the State (as that judicious  
*Ammiratus* upon *Tacitus*) *Bisogna accommodar la ragione di*  
*stato alla religione, & non la religione alla ragione di stato,*  
 So that absolute Princes, such as God made the Kings of  
*Israel*, having an extraordinary power in relation to an  
 extraordinary occasion, are not to give a particular reason  
 of any lawes they shall make, or any priviledges they shall  
 grant upon any such occurrences, neither will any wise mā  
 expect they should; especially if they seeme in the to time  
 at the generall good of Church & Common-wealth. At o-  
 ther times upon ordinary affaires, Princes may bee grati-  
 onfully pleased to condescend to give content, in giving rea-  
 sons; and to be led by the punctuall advise of learned Law-  
 yers, when there is no danger in deliberation with them,  
 delaying, nor in divulging. (As I remember *Julius Capi-*  
*tolinus* saith of *Antoninus Pius*) *Omnium qua gessit per*  
*Edita, & in Senatu rationem reddidit, & juris consulti*  
*adhibuit;* and not with great securitie and reason: seeing  
 he was the adopted sonne of a Senatour, and his Empire  
 was at the highest and deepest pitch both of peace and  
 plenty. And this power must necessarily bee granted to  
 bee

*Durandus de*  
*legibus, conclus.*  
*1. §. 19.*

*Clapetarius de*  
*jure Dominate.*  
*onū lib. 4.*

*Cyphanus I C.*  
*de vita Iustini*  
*ani Comment.*

bee most naturall to our Prince, if wee doe but consider what the most honourable Privie Counsell (that supreme representation of the State in ordinary) may doe in this case: whose wisedomes have the power, not onely in an *Interregnum* to send out proclamations, but also in the life time of the King, in extraordinary omitted cases, to order publique affaires by State ordinance, under their owne Telle and Seales.

Now our King being a most absolute Monarch, having this prerogative, from that we have and hold our priviledges, not from that written prerogative, abstracted out of *Fitzherberts* Abridgement, by *Sir William Stanford*, whereby the Kings Exchequer hath many priviledges, and peculiar procesles (as the Civilians call them *privilegia fisci, fisci utrumque jura habet.*) But from an unwritten unrestrained right of Dominion, whereby he hath plenarie power, not onely to make legall propositions of validitie, or voyde in their first institution, or to interpret them, either by declaring them to bee corrected in some points and cases, especially if hee correct them by a more particular expresse pressing Law; as he may correct the Law of Nature by the Law of Nations; the Law of Nations by the Law of armes; the Law of armes, by the Law of particular leagues; and all by the power of dominion: or restrain them in respect of some persons, or publique societies; but he may dispence also with them; since some penall Statutes are made with relation to his power of pardon after the Act; therefore it is not so much to except some from being obnoxious to the punishment, by pre-interpreting that it was not intended to extend to such persons, for so the priviledge is not against Law, but besides it, or above it; as the most judicious Civilians have alwayes accounted *exceptiones Regis & restrictiones, & jura exorbitantia, dispensationes, & limitatoria dispositiones*, to be concluded *intra justa jura Dominatio-*

*Girard, du Ha-*  
*llan des privi-*  
*ledges des Roys*  
*de France liv. 3.*  
*Cujacius observ.*  
*l. 2. c. 24.*  
*Cujacius in cor-*  
*pus Vlpiani ad*  
*tit. de Legibus.*  
*verb. quæ prohib-*  
*ent.*

*Ejus est inter-*  
*pretari legem,*  
*ejus est consti-*  
*tuere, L. 1. C. d.*  
*LL. Vi laic pro-*  
*bat Durand. E-*  
*pisc. Meldensis*  
*de legib. Conclus.*  
*3.*

nis. Yea there are Statutes dispensatorie; as that of the pluralitie, and not residencie, which the Archbishop of *Canterbury* limits by his approbation, in granting faculties of favour. And priviledges must necessarily be where there are multitudes of Statutes, which bee so strict in point of injunction, as if the makers of them had not considered, that politique Lawes must bee made with respect to morall possibilitie, as what men may doe; and yet the punishment of their transgression is not expressed, but left to the pleasure or displeasure of the King. But these are not the onely priviledges that the Kings royall prerogative doth grant, as immunities and impunities, for then the lawes should be onely punitive, if there were onely use of protections and pardons: but as lawes are also remunerative, so Princes have power to reward after a priviledging manner; and chiefly in our kingdome, where it seemes to be on purpose omitted by the written lawes, and left to the Kings pleasure and power; especially concerning Ecclesiasticall persons, who have most neede of them, and may now as freely enjoy them as any other persons. For though heretofore it was prejudiciall to our Kings to grant priviledges to all Ecclesiasticall persons, when they were so encreased in multitudes, and overgrowne in magnitude for the whole Kingdome, and the Popes would confirme them as irrevocable: yet now seeing they are but few in number, and small in power, & the King may call them in when he pleases, there is no true cause of danger. This want of these priviledges hath beene the cause of much evil in the Church, and the more they are impeached by those that protest themselves the maintainers of the Kings peace, lawes, and royall prerogative, the more will the State Ecclesiasticall runne to ruine: And they are much infringed in our Universities. Not so much by Acts of Parliament (if they were not misconstrued by abridgments) as by particular facts of those

*Eccle. Anglicana Canon. 41. Lex debet esse manifeste possibilis secundum naturam et secundum consuetudinem patrie loco temporis ut Durand. de legib. con. 1. 5. 3.*

Abridgement.  
1552.

*Dionysius Ad.  
vers. hist. cent. 7.*

*Cujacius in  
sent. Pauli. l. 1.  
tit. 12.*

*Bissonius de  
antiquitat. Jur.  
Civilis.*

*De origine im-  
munitatū Me-  
dicorum.*

that have power in their hands. For though I find an Act of Parliament, 9<sup>th</sup> *Henrici quarti*, that confirms all privileges, except some lately granted to the University of Oxford, which seemes to have relation to the Statute of Provisors; yet I beleeve some moderne Abridgers inferre more under the word *Excepted* than was intended: for I have no reason to thinke that *Henry* the 4<sup>th</sup> did peremptorily repeale any part of the Universities privileges, though hee might for some present particular reasons of State, not passe them with so full indulgence in all points. And I find a more ancient (and therefore as authentique) Abridger to be of my opinion; for he saith, that the King did moderate them: but suppose the Statutes passed about the time of *Edward* 3<sup>d</sup>, *Richard* 2<sup>d</sup>, and *Henry* the 4<sup>th</sup>, had beene more prejudiciall to Ecclesiasticall privileges then they are: Yet it may bee doubted whether those Acts were absolutely authentique, because the Lords spirituall consented not to many of them. As the same Abridger. This I am forced to complaine of, with feare, least that fall out which happened to the University of Prague; which was utterly ruined by *Charles* the fift, taking the privileges away at *Don Leva* his desire. Whereas *Francis* the first of France, fearing and favouring the University of Paris, restored all the privileges which *Levis* the eleventh had taken away upon a just ground of sedition, which hath made it to revive and flourish ever since. But there are some politiques that hold it a needlesse thing, to be any way indulgent to silly Schollers, as *Cujacius* saith out of *Galen*, that they expressed weake men under the title of *Scholastici*: they make meer *Apes*, *John-a-noke*s of them, but the fault is in themselves according to the French Proverbe, *Qui se fait brebis le loup la mange*: i. e. *He that makes himselfe a Lambe, shall bee eaten by the Wolfe*. For though the Clergie be weake of it selfe, and tempt the contemners of



of it to over-top and over-turne it: Yet since we have a pious prudent Prince, that is royally ready upon the first appeale, to protect and relieve his poore Clergie: wee are not to be pittied, if we neglect to implore his supreme assistance, for we are not in a condemned estate as common objects of abuse, nor under an unpittied oppression, which should beate us backe from the discovering our wrongs, as a State whose ruines are trampled upon, being overthrowne by a Princes disgrace, but wee fully enjoy our Soveraignes favour, which is the best foundation of a subjects fortune. And thus it is something evident how the honour of the Clergie annexed to the power of Order, is granted and sustained by the Kings lawes and royall prerogative. I must now in bricfe shew the like of the honour annexed to the power of jurisdiction.

s. 8. The power of jurisdiction which I do here intend, is not that delegated power which is in Bishops, Vicars, or Officialls, nor that power Archdeacons and Deanes exercise either by custome or priviledge; but that ordinary power which is in Bishops. To this power of jurisdiction there is honour annexed by the lawes of this land, and the Kings royall prerogative: which I divide as before, into revenues ordinarie, and priviledges; the revenues are their temporalls, and part of the perquisites, called the *Consus Cathedralicus*: the first of which are given and granted by the Kings royall bountie, & confirmed by the lawes; the other are set downe and approved by the same lawes. Bishops temporalls are annexed to their Sees by the Kings gift, and are as it were their Gleab, but are indeed their Baronies which they held of the King in capite, and performe services for them; and therefore they are as it were wards to the King during the vacancie: *quæ natione Baronia* (as *Linwood*) *ad Episcopum spectare possunt*, *Duarenus de Benefic. c. 12.* *Dominus rex custodiam habet;* (as *Duarenus* saith of the Kings of France) *Princeps quàm diu vacat Episcopalis sedes, feudorum*

*Augustinus de*  
*Ancona de po-*  
*rest. PP. quast.*  
*22. Art 9.*  
*Consecratio E-*  
*piscopi est com-*  
*plementum Or-*  
*dinis Sacerdota-*  
*lis; cum Albatu*  
*consecratio est*  
*institutio non*  
*sacramentum*  
*Ecclesia. ut de*  
*Palud. de causa*  
*immediat. pot.*  
*Ecclesiast. art. 5.*  
*P. anorm. in. c.*  
*cum in cunctis.*  
*S. cum vero*  
*extr. d. elect. n. 2.*  
*Limwood lib. 1.*  
*de constit. 12.*  
*Glanvil. lib. 9.*  
*cap. 1.*  
*Stamford pre-*  
*rogative c. 14.*  
*Limwood c. con-*  
*tingit. de immu-*  
*nit. Eccles. ver.*  
*¶ nisi Dominus*  
*Rex.*  
*1. Jacobi. c. 3.*

*fendorum lege, pradiorum omnium administrationem susci-*  
*pis.* But these temporalls are not to be restored in this  
 Kingdome till consecration, and so seeme to be annexed  
 to the power of Order in Bishops; for their consecration  
 according to the Scholasticall Canonists is *perfectio chara-*  
*cteris*, which they at first received when they tooke the  
 Order of Priesthood, and so seeme not properly annexed  
 to the power of jurisdiction, for before consecration upon  
 election and confirmation they may exercise the power  
 of jurisdiction, though not of Order. *Episcopus Electus*  
*& confirmatus potest exercere qua sunt jurisdictionis, non*  
*que sunt ordinis Episcopalis ante consecrationem; suspende-*  
*re potest a beneficio, non ab officio; quia ab officio suspende-*  
*re, est a potestate ordinis ordinaria.* But Justice Glauvil  
 seemes to intimate that they were restored, when they  
 were but Lords elect, becaule *electi ante consecrationem*  
*homagia sua facere solent*: but whether it were *de jure*  
*or de gratia* (as the learned in the Common Law distin-  
 guish) I leave to them to determine; and thinke it great  
 happinesse for the Bishops, and the great honour of our  
 moderne Kings, that they are so fully restored at all,  
 since they have as much power, and may pretend as  
 much reason to seise the temporalls into their hands as  
 well as others. ---- But our Royall Sovereignes pious  
 Father, set a good example to his Majestie to follow; for  
 in the first yeare of his raigne hee enacted a Statute to  
 prevent all diminution of Episcopall revenues, though it  
 were to alienate them to the use of his Crowne: yea  
 though it were but in exchange for impropriations, (a  
 course which was too common in Queene Elizabeths  
 daies) instead whereof our Kings have out of royall in-  
 dulgance given some licence for *Mortmaines*. If this  
 redresse had come before they had bene too much im-  
 paired, Bishops would not have desired so many Com-  
 mendams, nor Rectors of Parishes made use of the Sta-  
 tute of pluralitie. To their revenues in those temporalls-  
 there.

there are many honourable priviledges annexed, as they are Barones; So that Bishops have the priviledges of Barons in the Parliament; and that upon good ground, since they hold of the King, and performe the services belonging to them, their honour being as well personall as feudall, *non ratione nobilitatis sed ratione officii*. As the judiciously learned Selden (as Matthew Paris) *Episcopi de rege tenent in capite Baronias, & faciunt omnes consuetudines regis, & sicut ceteri Barones debent interesse judiciis regis cum Baronibus*. Now the Bishops (especially since the reformation) are ready and willing not onely to take the oath of homage, which some denyed heretofore, as *Thom. Becket*, and *Glanvill* who was the chiefe Justice, seemes to countenance it, by saying, *Episcopi consecrati non solent Domino regi homagium facere de Baronis suis, sed fidelitatem*. The present Clergie (I say) is not only ready to take the oath in the old favourable free forme [*salvo ordine*], but as it is now more strictly obligatorie by putting in these words [*in verbo veritatis*]; and leaving out the former. Which oath may be taken without any suspicion of Symonie, (*Panormitan*) *Homagium, vel fidelitas ab Episcopo prestari possit contra periculum Symonie*; and *Cajetan* the learned schooleman doth in this agree with this ancient able Canonist: *Episcopus legitime jurare potest Homagium quoddam vel fidelitatem, quia nil in isto juramento continetur, circa curam Animarum*; for that is taken in relation to their temporalls which they have frō the Kings favours; not in relation to their consecration, which they have frō the qualifying grace of God, which was well expressed anciently in their stile [*Dei gratia Episcopus*] and now by [*providentiā divīnā*], so that seeing they performe the same services, they may enjoy the same priviledges with the Barons. Now as all priviledges, so these that they enjoy common with them, are besides and above the Common course of law. For instance, as they are Assessours in Parliam-

Titles of honour  
pari. 2. c. 7

Mathew Paris  
Hen. 2. p. 130.

Glanvill. 9.  
cap. 1.

P. suor. inc. ex  
diligent. extr.  
Simon. n. 4.

Cajetan in se-  
cund. secund.  
p. 184. art. 5.

ment they may appeale by Proxie: as they are witnesses, they may sweare onely *Vsi Evangelii, verbo sacerdotis* as Barons, by their honour; and when they are at any time delinquents, they should be tried by their Peeres; (if they were tryed as Bishops, and not first degraded;) and so some have bene tryed, untill one appeale from them to the Pope. And good reason in those dayes they had, (if not now) to be so tryed, because many of the Bishops of those times were of the Princes of the nobilitie, (as may be seene in Bishop *Godwins* Catalogue of Bishops;) so that when Peeres were Bishops, why should not Bishops be Peers. It seemes in *Richard* the seconds daies they were so accounted, for when hee did make up the number of the twelve Peeres of the land, hee chose *Brentingbam* Bishop of *Exeter* one of them, which (I conceive) hee would not have done if hee had not bene a Peere before; and I am the rather perswaded so to thinke, because *Richard* the second extends the Statute of *Scandalum magnatum*, to Bishops as well as Dukes, Earles and Barons under the title of Peeres of the Land. Whence by the way; if wee were driven into an exeget for devices, I might inferre that this Prince who enacted the Statute of *Premunire* would never have so highly interested a Bishop in Civill affaires if he had accounted in a *premunire* to inter-meddle with them; or at least he did moderate it by priviledging some above it, in relation to some domestique business. Besides these priviledges which they have as they are Barons. The Kings of this land have bene pleased out of their Princely favours to bestow many freedoms upon them, especially on the Arch-bishop of *Canterbury*; as amongst other ordinary and knowne, one against his Majesties writen prerogative, as that the land held of that Bishop shall not be Ward to the King. Yea they were so much revered by the Statute-makers in *Edward* the first, that the Archbishop had,

2. Rich. 2. c. 5.

9. Hen. 4. c. 11.

Stamford, pre-  
10 Ed. 1. c. 1.

had the privilege to speed a proesse in his owne name, and to signe it with his owne seale. And I beleve the high estimation of that See abroad might moove them to it, for they are not onely siled Primates of all England, and Metropolitans, but Patriarches; *Patriarcha minorum gentium sunt Cantuariensis, Aquilensis, Biturgensis, Duarenus de Gradensis, gradibus Episc.* and the most lawfull Legats of the Aposto-  
*cap. 9.*  
 licall See: *Legati nati dignitas Episcopatus Cantuariensis, Lelius Zecch. de Romanis, Eboracensis, & Pisano amplexa est.* This forraine  
*statu Legat.*  
 respect might moove them more particularly to honour them, though they have alwayes most highly favoured Bishops in generall, insomuch, that they have made them not onely à sacrè, but à secretis, which is safe for a King, and no distraction to a Bishop in his calling; with *Lipsius Lipsius Annos.*  
*limitation interesse eos posse imò debere, sed reverenter cum de in 3. Polis.*  
*rebus planè seriis agitur, & qua tangunt universum statum,* then should not Princes need to forbid Bishops the Court  
*Fredericus Fa-*  
 without they were sent for, (as *Baronia* saith, *Justinianus* was faine to do.) Wise King Solomon made such choice  
*Baron. Annal.*  
 for the Princes of highest imployment and most intimate  
*Anno 328.*  
 secrecie, were of the Priest and Prophets and their chil-  
*1 Kings cap. 4.*  
 dren, (which I conceive was one reason that made *Iero-*  
*boam* runne another course when he plotted to ruine his  
 Monarchie) as then, so now assuredly this would prove a  
 course for the securitie both of Church and Common-  
 wealth; (as an old learned Lawyer of this Iland wrote in  
 the latter and better time of the raigne of Henry the 3<sup>d</sup>.)  
*Bracton, de vo-*  
*rum divisione l.*  
*1. r. 8. §. 2.*  
*Reges tales sibi associant ad consulendum & regendum po-*  
*pulum Dei, ordinantes eam in magna honore & potestate.*

Thus, I have briefly discoursed, though not fully discovered something of the relation betwixt the Divine Ecclesiasticall and the Civill; which I have done without advising in any thing to an alteration, or devising any thing for innovation; and with submission to the licence of authority, and the judgement of wise learned Readers,

who are able discretely to distinguish betwixt a respectiue tending of my selfe readily to retract any error upon their judicious signification, and a weake neglected undervaluing of my best thoughts; as if I understood my selfe no better, then out of a fond facultie, sillily to compile to satisfie any impertinent pedanticall, captious exceptions; whereas I professe I am not able to worke my selfe to any other resolution, then to say no, or nothing to them; taking the liberty to goe on in my way, and giuing them leave to take their course, and so wee shall not clash nor jutt: *Nam non eritant nisi in eadem via ambulantes.* And so I content my selfe with the same, or the like lot that was cast upon *Tully*, by the Readers of his forratiomall books *de Repub.* (which I would we had to read) viz. *Ciceronis libros de Repub. reprehendit hinc Philologus aliquis, hinc Grammaticus, hinc Philosophia deditur;* and I am incouraged to neglect such censures, because as ferious *Seneca* slights their peevisish curiositie; so I know many most solidly judicious, to whose wisedomes I may appeale from any.

## FINIS.

## ERRATA.

**EPIA.** Dedictory *Epistolae* read *Epistolae*. p. 6. marg. *participare*. r. *participare*. p. 14. l. 14. add *and*. p. 16. l. 3. *Admirandum* r. *Admirandum*. p. 18. marg. *admirandum*. l. 6. p. 19. l. 23. *subito* r. *subito*. p. 33. l. 33. make r. made. p. 36. l. 31. *Legists* r. *Legists*. p. 81. l. 35. *State* r. *Statute*. p. 83. l. 3. from r. frame. p. 83. l. 12. *Popes* r. *Kings*. p. 84. l. 34. *conclusion* r. *conclusion*.

